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SENATE RULES COMMITTEE

STATE OF CALIFORNIA



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MONDAY, JUNE 12, 1995
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16 MONDAY, JUNE 12, 1995

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25 Reported by

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27 Evelyn J. Mizak
28 Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARY F. BERGLUND, Member
California Transportation Commission

ROBERT DEL JUNCO, M.D., Member
Medical Board of California
Division of Medical Quality

MARIDEL M. MOULTON, Member
Student Aid Commission

ERNEST C. ROE, Warden
California State Prison at Los Angeles County

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CHAIRMAN LOCKYER: The first appointee we have is Mrs. Berglund. Have we heard anything?

MS. MICHEL: No, we don't have any official withdrawal.

CHAIRMAN LOCKYER: It's scheduled for a vote only today. I've been informed that Senator Beverly isn't due back right away.

There's been some confusion about this one, since it seemed at our last discussion that this was an appointee, quite possibly, that would be rejected by the Rules Committee. And there was some thought that, perhaps, it would be withdrawn, or resubmitted, or something. But we haven't heard anything from the Executive about that.

I'm assuming, in the absence of any communication, I would think that probably Senator Lewis would wish a motion to be made to confirm her. I guess it doesn't matter, so long as hold the roll is held open and he gets to vote.

My recommendation to the Committee, if you're prepared to vote today, would be a motion to hold the appointment in Rules.

Any discussion or thoughts about this? Her date runs sooner than Senator Beverly is expected back.

SENATOR AYALA: When you put it on hold, you're actually denying?

CHAIRMAN LOCKYER: Yes. That would be a negation.

SENATOR AYALA: I'll move that we put it on hold.

CHAIRMAN LOCKYER: Thank you, Senator.

So, the effect of the action would be to hold this

1 nomination in Rules.

2 And in case there's curiosity about that, I would only
3 briefly state that Ms. Berglund is a fine person with many
4 qualifications to serve in some appropriate capacity in state
5 government.

6 Oh, the Governor just got the call in at two minutes to
7 midnight? This may be the phone call that they're trying to
8 withdraw the nomination.

9 Does it matter? Well, let's accommodate the Governor, and
10 let them see. Although frankly, my recommendation would be that
11 we'll discuss it when it's more timely then.

12 SENATOR AYALA: If the Governor's going to withdraw the
13 nomination, why don't we just withdraw our motion as well.

14 CHAIRMAN LOCKYER: Thank you, we'll do that and just put it
15 on hold.

16 If the Governor resubmits the name, it's my suggestion that
17 we have expeditious vote at that time.

18 Next one is appointees appearing, starting with Dr. Del
19 Junco.

20 Good afternoon, sir.

21 DR. DEL JUNCO: Good afternoon.

22 CHAIRMAN LOCKYER: Do you want to begin with a little
23 statement at all?

24 DR. DEL JUNCO: Yes, that'd be great.

25 Mr. Chairman and Members of the Senate Committee on Rules,
26 in the sense of tradition, I'm pleased to be here in this room of
27 the State Capitol, as so many have before me, to ask your consent
28 to serve in the office to which the Governor has appointed me.

1 In the sense of shared mission, I am pleased to be here
2 representing myself and several of my colleagues on the Medical
3 Board to affirm my fundamental role, which is to protect the
4 interests of the consumer, who are also my patients, as they seek
5 secure health care from physicians and allied health professionals
6 whom they have come to trust.

7 And in a sense of accomplishment, with goals yet to be
8 achieved, I am pleased to be here to boast of the advances and
9 reforms which the Medical Board has achieved even during the last
10 six months as I serve as President, and to share with you the
11 goals which I feel we have yet to achieve, and to which I dedicate
12 my tenure on the Board even now as its President.

13 I was born into a political family whose love of freedom
14 was realized only through the gain of escape at considerable risk
15 from a country of oppression to the freedoms of the United States
16 and eventually to California. As I was raised, my father and his
17 family taught me the values of freedom of expression, and
18 suggested that he who fails to be involved in his government may
19 stand only to be -- to see his own freedoms diminish.

20 I do not say this to you today as a matter only of emotion
21 but as a matter of fact. I truly pursue my privileged role in
22 public service as you do, because I feel an obligation to serve
23 the public trust for I know from experience what it is for there
24 to be no concept of trust or obligation to the public.

25 I was originally appointed from my chosen profession to the
26 Medical Board of California four years ago by Governor Wilson.
27 Certainly, he had reason to trust me and so did the Senate when I
28 was confirmed at that time. But little did he, the Senate, or I

4
1 know at that time what the tasks were about to be.

2 When I was appointed in 1992, the Medical Board was a
3 victim of benign neglect. The Board had fallen into habits which
4 were criticized by the media, who could not understand the lack of
5 emphasis on enforcement and the lack of information provided to
6 the consuming public.

7 My mission and that of those appointed with me was clear.
8 We were to emphasize the protection of the consumer. We were to
9 clean up dirty laundry created by an internal investigation
10 prompted by the employees' union, and we were to bring about
11 reforms that would once again place California in the forefront.

12 As I ask for your confirmation for a second term, I appear
13 here proudly to report to you that I and my colleagues have
14 delivered on our promises and fulfilled reasonable expectations.
15 Beginning with the Medical Board Summit in March of 1993, followed
16 by the landmark reforms of May of 1993, which were reflected in
17 SB 916 by Senator Robert Presley, the Board transformed itself
18 from benign administrators of the public law to proactive policy
19 makers, setting the pace for medical licensure throughout the
20 nation.

21 Once jarred into the modern era, the Board set the pace for
22 enforcement policies that enacted new policies on information
23 disclosure to the public and reorganized itself to emphasize
24 enforcement. It supported a fee increase to provide additional
25 prosecuting attorneys, and it adopted a host of initiatives,
26 ranging from appropriate prescribing for pain, to incentives for
27 primary care physicians to serve in under-served areas of the
28 state. We not only reformed ourselves under the banner of a new

1 mission statement, but we took positive steps to help California
2 physicians do their job better.

3 Now, today, we are adding more reforms through SB 1775 last
4 year, and this year, through AB 1471, and through SB 609, which
5 continues a number of enforcement issues, including enhanced
6 protection against fraud.

7 As the current Board President, I'm not letting any grass
8 grow under my feet. We have formally adopted a priority case
9 system for enforcement and prosecution. We adopted a new three-
10 year information system plan to ensure that we are poised to enter
11 the 21st Century, and we initiated programs in telemedicine and
12 managed care that are on the cutting edge.

13 Today as well, we are pursuing even more vigorous
14 enforcement. We have opened a veritable battle front on those
15 hospitals and peer review committees that won't report
16 restrictions on hospital practice, as required in Section 805 of
17 the Business and Professions Code. Legislation to address some of
18 these issues is pending.

19 We are also seeking further help, which the Senate has
20 already provided this year with passing SB 609 in combating the
21 errant physicians hired in workers' compensation fraud.

22 In addition, we are emphasizing cost recovery for errant
23 physicians to help fund our regular duties rather than rely on fee
24 increases for licensing applicants.

25 Still, in all, there is much to be done. Not only are
26 there the futuristic issues -- telemedicine, computerized
27 licensing examinations, and national authentication of court
28 documents for licensure -- but there are the issues of constant

6
1 improvement.

2 Even as our total number of complaints grows, there is a
3 proportionally growing number of investigations. The problem that
4 still bedevils us is case aging. Simply put, it still takes us
5 too long to investigate and prosecute cases. Sixty percent of
6 that time is beyond our control: hearings, court calendars, and
7 defense bar delays. But we do control 40 percent of the time.
8 Justice delayed is often justice denied, as the saying goes.

9 So, it is my highest priority for the balance of my term as
10 President, and then as a Board member thereafter with your
11 consent, to bring down the number of days it takes to complete
12 initial intake, evaluations, investigations, and submittal of
13 formal accusations.

14 Thus, much is left to be done, even as we prepare for the
15 21st Century. Our progressive reforms have, I believe, brought us
16 from a period of benign neglect to becoming a leader among
17 licensing regulators in the nation.

18 But for my part, I cannot stand alone in the success of the
19 past, even though I'm quite proud of the things that we have
20 already approved since the onset of my service on the Board and my
21 term as President.

22 I sincerely hope that, by recommending approval of my
23 reconfirmation, you will join me and my colleagues on the Board to
24 make further strides towards reform and in further emphasizing the
25 Board's role as the protector of the consumer.

26 And as I said at the onset of my remarks, I do not take
27 these halls and rooms in this building for granted. We are all
28 here for a purpose larger than ourselves, and I believe I share

7
1 that purpose with all of you.

2 Thank you.

3 CHAIRMAN LOCKYER: Thank you, Doctor.

4 Any questions from Members? Senator Ayala.

5 SENATOR AYALA: There's a move afoot to increase the
6 membership of the board with more private members, from seven to
7 eleven.

8 Do you have a position on that?

9 DR. DEL JUNCO: You know, obviously, I'm a licensed
10 physician, and what I've seen in my four years on the Medical
11 Board is the transformation of the Board.

12 In greater than 95 percent of the cases that come back to
13 us from administrative law judges that we as a Board disagree,
14 it's typically the physicians who want a harsher penalty in 95 of
15 the times that we disagree.

16 We queried the public membership of the Board. In fact,
17 there have been letters drafted to the public membership that in
18 opposition to that thought, that there still -- that the current
19 balance of physicians and public is acceptable.

20 But I think that that's up to the Legislature and to the
21 public.

22 My role, I see, as an individual member of the Medical
23 Board is to serve the consumers. And with the knowledge I have as
24 a physician, I try to do that to the best of my ability.

25 SENATOR AYALA: So, you prefer not to increase the --

26 DR. DEL JUNCO: Well, I think that there's -- interestingly
27 enough, and I've had this discussion with a number of members, is
28 that having a father who was previously a President of the Medical

1 Board, I had some insight as to the amount of work that was needed
2 in order to be a member of the Medical Board. And I've served in
3 every capacity on the Medical Board, from Secretary, to the
4 President of the Division of Licensing, to every conceivable
5 committee. And you really have to be dedicated to the role that
6 you have in serving the consumer in this area which is medicine.

7 So, it takes at least two years to come on board with the
8 knowledge and understanding of what you're doing. And being a
9 physician, you have a tremendous advantage. Certainly, the public
10 contribution is extremely important, but as a physician, I think
11 that the makeup as it exists right now is acceptable.

12 I'm looking for the rationale. And actually, what I've
13 asked our current Director to do -- Executive Director -- is to go
14 back and query all the previous public members that have been on
15 the Medical Board over the last five years and get their opinion.
16 I'm very interested in their opinion. Since they've served the
17 Medical Board as a public member, do they feel that the makeup is
18 appropriate. I think that is the group of people that should
19 answer that question.

20 SENATOR AYALA: That means that if you increase if from
21 seven to eleven, it would be more consumer input.

22 DR. DEL JUNCO: Right.

23 SENATOR AYALA: You say, check with those members who have
24 served in the past to see if they feel there was a need for
25 greater membership of the private sector.

26 DR. DEL JUNCO: Correct, absolutely.

27 CHAIRMAN LOCKYER: Anything else? What's the pleasure of
28 the Committee?

1 Did anyone wish to comment who's present?

2 SENATOR AYALA: I'll move the nomination.

3 CHAIRMAN LOCKYER: We have a motion by Senator Ayala. Call
4 the roll.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator
8 Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
11 Lockyer.

12 CHAIRMAN LOCKYER: Aye.

13 Let's put the matter on call so Senator Lewis can vote.

14 [Thereupon, Senator Lewis
15 later returned to Committee
16 and voted in favor of the
17 confirmation, making the
18 final vote 4-0.]

19 CHAIRMAN LOCKYER: We are appreciative of your commitment
20 to public service and hope you'll continue conscientiously, as you
21 have been.

22 DR. DEL JUNCO: Thank you very much.

23 CHAIRMAN LOCKYER: Maridel Moulton, Student Aid Commission,
24 has been reappointed.

25 Hi.

26 MS. MOULTON: Hi.

27 CHAIRMAN LOCKYER: Did you want to begin with any comment?

28 MS. MOULTON: Just a couple of brief ones.

1 CHAIRMAN LOCKYER: Sure.

2 MS. MOULTON: Good afternoon, Mr. Chairman, Members of the
3 Senate Rules Committee.

4 I'm pleased to have the opportunity to talk with you today
5 about the California Student Aid Commission, and about my
6 continued interested in serving as a Commissioner.

7 I was first appointed by Governor Wilson in March of -- in
8 February of 1992. I began serving in March of 1992, and I was
9 confirmed by the Senate in February of 1993.

10 I served as Vice Chair of the Commission from 1993 through
11 1994, and began a term as Chair this past January.

12 I bring to CSAC a 20-year commitment of public service in
13 the field of education.

14 Today, I want to begin by thanking you and all the Members
15 of the California Senate for your consistent and robust support
16 and leadership in providing access and opportunity for
17 California's students. I commend you for your crystal clear
18 support for the critical Cal Grant Programs, for the mission and
19 the work of the Student Aid Commission, and for providing the
20 opportunity of post-secondary education to California's students
21 and to this state's future health.

22 This strong commitment has also caused you to raise
23 considerable concerns this past year about the Commission. I'm
24 here today, with gratitude, to assure you that we are working
25 diligently and making substantial progress in resolving our
26 differences with the U.S. Department of Education. We are working
27 actively to improve the deficiencies in our information systems
28 area, and we have strengthened and continue to strengthen our

1 management team. I can share with you specific milestones of
2 progress in each of these areas.

3 Even more importantly, I want you to know that we have re-
4 engaged in a comprehensive strategic planning process to examine
5 and define what role we can most effectively assume in the coming
6 year in order to not only deliver financial aid efficiently, but
7 also to assist the Legislature, the administration, and all of our
8 colleagues and partners with the development of a strong, clear
9 public policy to guide our collective work.

10 Our planning work is squarely centered on the students. We
11 continue to value our ability to consult with and obtain guidance
12 from you.

13 I will be happy to answer any questions you may have to the
14 best of my ability. I'm eager to help you understand where the
15 Student Aid Commission is in June of 1995, and to have you feel
16 confident in supporting my reappointment.

17 CHAIRMAN LOCKYER: Any questions? Let me begin.

18 There's been this legal dispute with the U.S. Department of
19 Education that gets to be fairly substantial, \$60 million, or
20 something.

21 MS. MOULTON: \$62 million.

22 CHAIRMAN LOCKYER: What's the status of all that?

23 MS. MOULTON: The current status, actually there was a
24 press release last week that came out jointly from the Student Aid
25 Commission and the U.S. Department of Education.

26 They have withdrawn the management plan that they requested
27 that we enter. They're very pleased with the progress we've made
28 on that front.

1 We've made significant progress in discussing with them the
2 deficiencies in our financial aid processing system. I think
3 they've come to understand that there is strength in the front end
4 of that process in particular. In fact, we've surveyed eight
5 other major guarantee systems across the nation, and our lenders
6 and our customers like a lot of the electronic interface. In
7 fact, we have -- a more modern language than many other systems.

8 I think the U.S. Department of Education has come to value
9 that we have to serve our customers. They don't -- they're not
10 mandated to come to us, and that that front end piece is very
11 important.

12 Their concern continues to be around the accounting
13 functionality and some of the data base components. And they've
14 actually agreed to assist us by sending in outside resources.

15 We're at the point where we believe working together is in
16 the best interest of resolving these issues. And they anticipate,
17 and so do we, that there will be resolution.

18 CHAIRMAN LOCKYER: Senator Petris.

19 SENATOR PETRIS: I'm interested in overall student
20 financial aid.

21 The interest subsidy that we had with student loans at the
22 federal level, has Congress decided that they're going to
23 eliminate the subsidies, as they call it, for not paying interest
24 during the year?

25 MS. MOULTON: The in-school interest subsidy.

26 SENATOR PETRIS: Yes.

27 MS. MOULTON: I don't believe that's been resolved yet.
28 There's a difference between the two Houses of Congress on that

1 matter.

2 SENATOR PETRIS: Has the Commission taken a position on
3 that yet?

4 MS. MOULTON: Yes, the Commission has requested -- the
5 Commission has brought to the attention of Congress the fact that
6 that has a very significant effect on the students of California.
7 Almost a 20 percent increase, actually, in the costs that they
8 will bear for financing their education.

9 We would like to see them continue the in-school interest
10 subsidy.

11 SENATOR PETRIS: Are there any projections from the experts
12 as to what Congress is going to do?

13 MS. MOULTON: What I've been told is, it doesn't look
14 promising.

15 SENATOR PETRIS: What's the impact going to be on
16 California? We know it raises the cost 20 percent. Will it cause
17 a drop in the number of students attending school?

18 MS. MOULTON: I suspect it will.

19 SENATOR PETRIS: Loan interest makes a difference?

20 MS. MOULTON: I think one of the things the Student Aid
21 Commission has been particularly concerned about, when I spoke
22 about strategic planning, is, if you look at the absolute -- if
23 you look at scales, how the shift has come to indebtedness, and
24 the fact that who's paying attention really to the fact that
25 students are leaving college today, if they graduate, with major,
26 major debt loads.

27 The impact, we think, will be discouraging for a family,
28 particularly with limited means. Taking out a loan is, itself,

1 very risky, let alone if you must pay not only the loan but the
2 in-school interest subsidy at the same time.

3 It's going to deter young people. There's no question, I
4 don't think.

5 Nobody can predict exactly what will happen, but borrowing
6 is frightening to families particularly of limited means. That's
7 why the Cal Grant program is so important, and why grants
8 oftentimes have a real significant impact in those first few
9 years.

10 SENATOR PETRIS: That was my next question, Cal Grant.
11 That's going to take a big beating if Congress pursues the course
12 that it seems to be pursuing.

13 MS. MOULTON: It will.

14 SENATOR PETRIS: What plans does the Commission have to try
15 to make up those funds?

16 MS. MOULTON: Well, the Senate actually, you all have taken
17 a position related to that in terms of adding some backfill for
18 that money, that potential.

19 I think we've taken a very strong position related to,
20 we've gone on record and communicated to all members of the
21 California Delegation in Congress that we would like to see them
22 protect those programs; that we think they're very critical; that
23 we think, again, the combined impact will be devastating to
24 California students in providing access, particularly the limited
25 income students.

26 SENATOR PETRIS: This seems to be just one part of the
27 assault on the college student these days.

28 MS. MOULTON: It does.

1 SENATOR PETRIS: The assault on affordability.

2 MS. MOULTON: Fees.

3 SENATOR PETRIS: It's caused us a great deal of concern. A
4 majority of the Senate, as you know, has gone on record opposing
5 any more increases in fees. We're trying to do whatever we can to
6 backfill, and this and that.

7 But we seem to be hammered constantly by the proposals
8 being discussed in Congress. They seem to be hostile to any
9 college student that doesn't come from a family that's able to pay
10 the freight, no matter what it is. That's the impression I get,
11 speaking for myself.

12 So, I hope your Commission keeps on doing what it can to
13 counteract that and to persuade the Congress.

14 You're allowed to do that; aren't you?

15 MS. MOULTON: Yes, we are. In fact --

16 SENATOR PETRIS: Persuade the Congress to reverse that
17 trend and not carry out these proposed obstacles that they would
18 be throwing financially in the way of the students.

19 I notice that on the Stafford Loan In-school Interest, it
20 would affect almost 142,000 students in the first go around.

21 MS. MOULTON: The other thing that we did, actually, was,
22 we ran a data census by district in California to demonstrate what
23 the impact would be in each Congress Member's district of the
24 elimination of that in-school interest subsidy. And we provided
25 that information, thinking again that information that we had
26 available to us would be helpful to them to understand the impact
27 of that kind of a decision.

28 This year we also formed for the first time, we

1 reconfigured the Commission itself about seven or eight months
2 ago. We used to have a Program Committee, and we created two
3 Program Committees: one to deal with the Cal Grant Program, and
4 one to deal with the Federal Family Education Loan Program.

5 We also created for the first time a Governmental Relations
6 Committee, feeling that we had to take a more assertive posture in
7 relationships both with Congress and in our relationships with
8 you, quite frankly, so that we didn't just appear when we were
9 called before you related to issues, but so that we could actually
10 help provide you with information related to the policy decisions
11 that you're called on to make, and so that you would have a more
12 comprehensive understanding, given all the you deal with, of what
13 some of these impacts are.

14 SENATOR PETRIS: I'm sure that'll be very helpful to us.

15 There's also the Perkins Loans and the College Work Study.

16 MS. MOULTON: That's right.

17 SENATOR PETRIS: They're cutting on both of those.

18 Have you personally, or has the Commission, met with the
19 Governor on this to express concern, maybe get his help?

20 MS. MOULTON: We have not met with the Governor around this
21 issue. That's probably a good suggestion, as a matter of fact.

22 We forwarded our position to the Congressional Delegation.

23 SENATOR PETRIS: I think it would get a good boost from the
24 Governor if he would agree, if he does agree, and would make his
25 views known to the Delegation. It seems to me it would be very
26 helpful.

27 MS. MOULTON: The Governor's been very supportive, as you
28 know, of the Cal Grant Program --

1 SENATOR PETRIS: That's fine.

2 MS. MOULTON: -- and those things over the years, which
3 we've appreciated. It's really been a bipartisan support system
4 for the kind of work that we do.

5 SENATOR PETRIS: Yes, he's been very good at it. That's
6 one of the reasons I raised the question.

7 MS. MOULTON: That's a good point.

8 SENATOR PETRIS: I'm sure he's highly respected in the
9 Delegation by both parties. Perhaps he could go direct to the
10 leadership of the two Houses.

11 MS. MOULTON: I'll follow up on that.

12 SENATOR PETRIS: Thank you, Mr. Chairman.

13 CHAIRMAN LOCKYER: Senator Ayala.

14 SENATOR AYALA: You had an independent report by MGT in the
15 spring of '94 indicating some problems with communication between
16 your organization, the schools, and lenders.

17 I understand they were told you were looking for an
18 Executive Officer, and as soon as you hired one, you would start
19 addressing those issues.

20 Do you have one now?

21 MS. MOULTON: We do.

22 SENATOR AYALA: What progress, if any, have we made in
23 correcting those problems?

24 MS. MOULTON: Actually, we have a new Executive Officer
25 coming on board in July. That hiring was done --

26 SENATOR AYALA: He's not on board yet?

27 MS. MOULTON: No, he's not on board yet. Actually, he was
28 just offered the position a week ago and accepted.

1 But we actually haven't been waiting for a new Executive
2 Officer to come on board. One of our chief deputies has been an
3 interim director and has done an outstanding job, quite frankly,
4 moving us forward.

5 Last year, Senator Ayala, we also instituted a school and
6 lender survey, where we went out with the help of a marketing firm
7 to survey our schools and lenders related to issues of concern for
8 them; things like, how long it took to get a phone call answered;
9 things like how long it took to get -- the volume of
10 correspondence and phone calls is quite large, as you can well
11 imagine.

12 So now, we actually report to them monthly on our progress
13 in those areas, and that survey is being redone this year so that
14 we can actually offer benchmarks from the first year and measure
15 our progress.

16 I think if you were to talk to our school and lender
17 communities, they would tell you that they've seen substantial
18 progress in communicating with them and understanding their
19 issues.

20 SENATOR AYALA: But the communication problem has been
21 addressed between the schools and your organization and lenders?
22 Without that communication, I don't know how you can acquire funds
23 from the public sector.

24 MS. MOULTON: When you're talking about communication, do
25 you have something specific in mind related to that?

26 SENATOR AYALA: Well, just generally speaking, there hasn't
27 been that much communication between the SAC and the lenders and
28 the schools involved. I couldn't understand how you could

1 function as an aid to students without that communication being in
2 place.

3 MS. MOULTON: You're right, we can't.

4 Again, one of the points is that they aren't required to
5 come to us for their guarantee. They can go to other guarantee
6 agencies; they can go to private agencies, and they can go to
7 agencies that offer it in other states.

8 So, we are required to operate in a very entrepreneurial
9 way because we have to keep our business. You don't have rules in
10 place that demand that lenders come to us for their guarantee.

11 We do have a Lender Advisory Committee that's been
12 instituted, so they give us ongoing advice from the lender
13 perspective as well as to the schools. Not only that, but we have
14 advisory units to help us with our financial aid processing system
15 problem.

16 As I said, that coupled with the actual definitive survey
17 that we did of schools and lenders to ask them what they were
18 concerned about, and how we ought to bring about improvements, has
19 led to -- I'll give you a couple of examples.

20 We do something now called the Report Card every month,
21 which actually shares with them progress that we've made in
22 specific areas and gives them the charts that will actually show
23 them how quickly phone calls are answered and returned, how
24 quickly correspondence is answered from them.

25 We also have instituted a Chair's Report after each meeting
26 of the Commission, each major meeting. There's a report that's
27 issued because by the time we waited for our minutes to get
28 developed, and our meetings are every two months, it was a fairly

1 significant time lag in which they didn't understand the kinds of
2 actions that we took. So now there's a Chair's Report that goes
3 out usually within a week or two of our meetings to update our
4 schools and lenders on our actions.

5 SENATOR AYALA: But you're saying that the process is that
6 they, lenders, come to you; you don't go to them.

7 MS. MOULTON: No, we go to them as well. They actually sit
8 on advisory committees for us, where they give us advice related
9 to some of the --

10 SENATOR AYALA: You can be aggressive in obtaining these
11 funds for the student aid by contacting the lenders.

12 MS. MOULTON: We sure can.

13 SENATOR AYALA: Nothing unethical about that; is there?

14 MS. MOULTON: Absolutely. And in fact, part of our
15 strategic planning process that we spoke about, about two weeks
16 ago, was actually putting in place and exploring with lenders
17 whether there were other ways for them to contribute to student
18 financial aid besides just loans.

19 SENATOR AYALA: I have no more questions, Mr. Chairman.

20 CHAIRMAN LOCKYER: Is there anyone present who would wish
21 to make any comments? Senator Petris.

22 SENATOR PETRIS: I'm very impressed with this individual,
23 and I would move that we confirm the appointment.

24 CHAIRMAN LOCKYER: All right, the motion's before us.

25 I join your fan club. I think that you are to be commended
26 for your disciplined and focused way of trying to manage this
27 important piece of state government and not just let the problems
28 get away from you.

1 MS. MOULTON: Thank you.

2 CHAIRMAN LOCKYER: Call the roll, if you will.

3 SECRETARY WEBB: Senator Ayala.

4 SENATOR AYALA: Aye.

5 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator
6 Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
9 Lockyer.

10 CHAIRMAN LOCKYER: Aye.

11 I'll put it on call again so Senator Lewis can vote.

12 [Thereupon, Senator Lewis
13 later returned to Committee
14 and voted in favor of the
15 confirmation, making the
16 final vote 4-0.]

17 MS. MOULTON: Thank you.

18 CHAIRMAN LOCKYER: Good luck.

19 MS. MOULTON: Thanks.

20 CHAIRMAN LOCKYER: We have Mr. Roe. Good afternoon, sir.
21 Do you want to start with any kind of comment?

22 MR. ROE: I will make a brief introduction, if you don't
23 mind.

24 To the Chair, Members of the Senate Committee, I'd first of
25 all like to say thank you for this opportunity to offer my
26 credentials for consideration for the Warden's position
27 confirmation process at the California State Prison, Los Angeles
28 County.

1 In January of this year, I did celebrate my 23rd year in
2 the criminal justice system, starting off at the age of 21 as a
3 Deputy Sheriff in San Joaquin County. I worked that position for
4 several years, worked every aspect, including the jail system, as
5 patrolman, as a detective, and most importantly to me, to work
6 with youth in the schools and the community.

7 I did that for several years when I decided that I wanted
8 to go into teaching. I completed my degree, earning a Bachelor
9 Degree and also a Teaching Credential, and began teaching for the
10 Department of Corrections at the Deuel Vocational Institution at
11 Tracy.

12 I taught that position for about six months and took a
13 permanent position with the California Youth Authority, which I
14 taught at that position for about three years. I was able to
15 obtain a Master's Degree in Education and promoted to a Supervisor
16 of Correctional Education Program position at the Sierra
17 Conservation Center. Worked that position for a few years, still
18 allowed to grow and to develop.

19 Was able to promote to a position of Supervisor of
20 Correctional Education Program in Headquarters, which is
21 equivalent to a principal. At that time, I was one administrative
22 principal position in the state, and I served in that capacity for
23 about two and a half years.

24 Went back to Deuel Vocational Institution, where again I
25 continued to grow and expand. Worked with custody staff; worked
26 with all of the academic and vocational programs. And not because
27 of me, but hopefully with some contributions that I made, Deuel
28 Vocational Institution still remains one of the best education

1 programs in this state in the area of correctional education.

2 I was able to promote to an Associate Warden position at
3 the California Correctional Institution in Tehachapi, again
4 working in facilities that had all the full spectrum of inmates,
5 from a minimum yard. At the time I promoted there, it also had
6 responsibilities for the administration of a camp program, and all
7 the way from a Level I to a Level IV inmate. Worked that position
8 for approximately three years. Promoted to a Chief Deputy Warden
9 at that facility, and again, worked there for about a year and a
10 half.

11 I have been exposed to all types of inmates. Been involved
12 in situations that I think we came out of okay. And most
13 recently, of course, had the absolute pleasure to be appointed to
14 the wardenship at the California State Prison, Los Angeles County,
15 and been in that position for approximately -- well, since the
16 month of August of 1994, and continue to serve with a good staff
17 and offer the credentials that I have.

18 Again, I want to thank you for the opportunity to express
19 my credentials, and again, just still willing to serve.

20 Thank you.

21 CHAIRMAN LOCKYER: Senator Ayala.

22 SENATOR AYALA: This prison is located at Lancaster,
23 California?

24 MR. ROE: Yes, it's in Lancaster, California; that's
25 correct.

26 SENATOR AYALA: And you have had a history of escapes there
27 in the short time that the prison's been in existence?

28 MR. ROE: There have bad been -- there have been a total of

1 four escapes: two escapes from the maximum security side; two
2 from the minimum program, the last being in January of 1994.
3 There have been not a history of escapes since then.

4 SENATOR AYALA: Have you done something to shore up the
5 security at that place to avoid that from happening any further?

6 MR. ROE: Well, there have been a number of steps that have
7 been taken to help to attempt to alleviate the possibility of
8 escapes.

9 The one thing I want to point out is that the escapes, from
10 all the analyses that I've read, a large part of that problem was
11 due to some procedures being in place but not being followed.

12 One of the most descriptive things that I can tell you to
13 help eliminate the escapes from a maximum security prison, of
14 course, is the electrified fence that's active and on at this
15 particular time. That's a standard. I mean, it does not go to
16 sleep. It's always on; it's always activated.

17 That and shoring up some of the staff training, shoring up
18 some of the check points -- the entries, the exits -- doing
19 several other things internally, yes, to try and alleviate the
20 possibility of an escape.

21 SENATOR AYALA: The Three Strikes law, how has that
22 affected the population in your prison? It's been a short while
23 since it became law.

24 MR. ROE: Well, the count as of today, I have about 50
25 inmates that were sent to me as Third Strikers.

26 Of course, that is going to have an impact. We're going to
27 be saddled with a number of inmates that are going to be staying
28 with us, in some cases, for the rest of their lives.

1 We haven't really seen the full flood gates open yet;
2 however, I do have 50 of them that we're screening and dealing
3 with at this time.

4 SENATOR AYALA: What percentage of your inmates are
5 enrolled in the educational programs or vocational programs?

6 MR. ROE: My education program, when it's all double-
7 shifted and brought on line, I will have a total of 85 programs.
8 I will have about 35 percent of all of my inmates will be involved
9 in some kind of an academic or vocational program.

10 SENATOR AYALA: Is there a waiting list to get involved in
11 these programs?

12 MR. ROE: I do have some short waiting lists. We've been
13 screening the waiting lists down because we just went through what
14 we call a 4-10-40, where we've gone to 10-hour programming in an
15 effort to double the amount of inmates that have access to the
16 program.

17 When the inmates are off the bus and going through the
18 screening process, of course, they're seen in a Classification
19 Committee that makes a determination as to what program they're
20 going to participate in. And at that point, they are put on some
21 waiting list, yes.

22 SENATOR AYALA: What design capacity for inmates in the
23 prison that you're the Warden of, what's the total capacity?

24 MR. ROE: Well, the design capacity --

25 SENATOR AYALA: The design capacity as opposed to what you
26 have there now. That may be two different things.

27 MR. ROE: Yes. It was, design capacity was 2200 bed
28 facility.

1 SENATOR AYALA: How many?

2 MR. ROE: A 2200 bed facility. That includes a 200 man
3 minimum support unit on the outside.

4 My count this morning was 4,035.

5 SENATOR AYALA: No more questions.

6 CHAIRMAN LOCKYER: Didn't some of the '93 escapees climb
7 the fence? Did they not have electric then, or what happened?

8 MR. ROE: Yes, in July of '93, there was the -- it's
9 alleged that an inmate did go over the fence.

10 The second one that escaped in October of '93, escaped
11 through what we think is through the trash bin.

12 CHAIRMAN LOCKYER: Dumpster.

13 MR. ROE: The electrified fence, no, it was not on at that
14 particular time. And again, that's why I referred to the
15 possibility of --

16 CHAIRMAN LOCKYER: That's been fixed?

17 MR. ROE: That's correct, yes.

18 CHAIRMAN LOCKYER: Somebody paid the light bill or
19 whatever?

20 MR. ROE: It's definitely been paid, sir.

21 CHAIRMAN LOCKYER: Now, you did a significant amount of
22 your early career in the education side, but now you've decided to
23 be a generalist and worry about the laundry, and discipline. Why?

24 MR. ROE: Well, I think that's one of the concerns about
25 education.

26 I came to this Department as a supervisor, and again, I was
27 always involved in further aspects of the overall operating
28 programs than just education. Part of that is because I was

1 fortunate to have worked for some extremely good managers, be them
2 wardens, that stand in Headquarters. So, I was always exposed to
3 the whole gamut anyway.

4 I think it was just the general next step in my career. I
5 do have a Master's Degree in Administration, so to put it bluntly,
6 I think I'm up for the challenge, if I may.

7 But again, I mean, I think just the overall growth. I've
8 done some -- been exposed to a lot of opportunities. I've learned
9 a lot, and just continue to put it to work.

10 CHAIRMAN LOCKYER: I have one reaction, which is, you know,
11 we see a lot of wardens come by for confirmation, and most careers
12 started as kind of line officers and that sort of thing, and
13 they've moved up on that side.

14 So, probably it's good to have people that have a little
15 breadth in the system at your level. I hope that that's good in
16 terms of having an advocate for education programs, since you
17 would know about that. Presumably, you could put in a good word
18 when it was timely.

19 What did you learn from your Deuel and other assignments on
20 education? What works? Clearly there is a problem with a lot of
21 prisoners being under-educated.

22 If you had to explain to some new hire, here's the secret;
23 is there one?

24 MR. ROE: To a new hire or to a new inmate?

25 CHAIRMAN LOCKYER: Well, if you were a teacher, were
26 training a new teacher, or to an inmates, yes, how do you make it
27 work?

28 MR. ROE: Well, sir, I have a number of real stories to

1 tell you, but I can just kind of focus in on one.

2 The one thing I tell teachers and I tell inmates also: You
3 are a captive audience; you're going to spend your time in my
4 program and any program under my jurisdiction. And the key word
5 here is going to be "learning".

6 I've gone through grad school. I know all about
7 contingency contracting and everything else, but my statement to
8 them is, "The way you're going to learn is, you're going to have
9 to unlock your brain yourself." And it's going to be all about
10 self-motivation and learning how to do something differently.

11 I tell them that, "It's obvious that what you've been
12 doing, the decisions you've been making, are obviously not the
13 right ones. It is time for you to start focusing in on the rest
14 of your life. You know, if you want us to warehouse you, we have
15 jail cells, we have prison cells that can do that."

16 And again, in most cases, it's a very effective speech.

17 I tell the teachers that, you know, my one expectation from
18 them is to bring that inmate from a nonreading status, and by the
19 time they walk out of your program, I expect them to be writing
20 letters home. I expect them to be reading. I expect them to be
21 prepared to read to their kids when they parole.

22 And again, with those kinds of lectures, it seems to work.

23 I've been extremely successful. One of my success stories
24 does -- it goes back to DVI, where I began working with an inmate
25 who was a nonreader. By the time I left that program, he had in
26 fact written his first letter home.

27 So, I think there's some successes out there, and you know,
28 I'm totally dedicated to that commitment and education.

1 CHAIRMAN LOCKYER: Senator Lewis, we're with Mr. Roe now,
2 Warden, and we have other prior items on call for you to review.

3 SENATOR LEWIS: Thank you.

4 CHAIRMAN LOCKYER: Is there any budget issue with respect
5 to education and job training for inmates? Do you feel like
6 there's a constraint, that there just isn't money for it? Or is
7 that okay?

8 MR. ROE: Well, speaking from my own experiences, and
9 again, that's one of the things about a teacher. A teacher is
10 always resourceful.

11 I can just tell you, at my facility, with the education
12 budget and the condition that it's in, which is positive, with the
13 community donation, the community support that we're starting to
14 get now, we are making do. I think we will just kind of continue
15 to progress in the area of education.

16 CHAIRMAN LOCKYER: There's more violence. There seems to
17 be an increase in violence among inmates and involving inmates in
18 yards.

19 Does that seem to be an accurate description of a growing
20 problem?

21 MR. ROE: I think we are, in fact, working with a new breed
22 of inmates. If I take you back to my days as a deputy sheriff, I
23 could go out and make a felony car stop by myself, and make the
24 arrest and take the person to prison or to jail.

25 I don't think I would dare do that this day.

26 In talking to some of my colleagues that are still
27 deputies, deputy sheriffs or working with police departments, they
28 make sure that adequate backup is there.

1 I think it's just an overall deterioration, in fact, for
2 the -- just for authority, period.

3 In prison, I think one of the keys to working with the
4 inmate population is simply to make sure that if they have
5 something coming, they get it, and to make sure that we're all
6 walking and talking with inmates.

7 The majority of the uprisings or potential uprisings, it
8 comes to our attention, and basically comes from an inmate that
9 has rapport with the various staff members.

10 So, I think the key is communicating with the inmates and
11 making sure that, you know, we're going to be consistent when it
12 comes to enforcement of the rules.

13 CHAIRMAN LOCKYER: Illegal use of drugs. Do you see a
14 problem in Lancaster?

15 MR. ROE: There are drugs that come into the Lancaster
16 Prison. Again, just like in the area of making sure that we're as
17 confined and as security conscious as possible, we're always
18 tightening up on our procedures. We're always looking, listening.

19 But again, yes, drugs have found their way into the prison
20 system, and we continue to work with that on a daily basis.

21 CHAIRMAN LOCKYER: What do you do, or don't you do, that
22 maybe some would think is too extreme of intervention or
23 something? What kind of checks go on now, and what might you do
24 but you don't for reasons of controversy?

25 MR. ROE: Well, the things that we've really shored up on
26 is making sure that every visitor that's a nonstaff member that
27 comes into the prison system, that's either a nonstaff member or
28 not escorted, be them volunteers or other visitors, we make sure

1 that they do go through a metal detector, go through some kind of
2 a search process.

3 I'd have to be extremely graphic if I explained the way
4 that some of the drugs get in prison, but through every body
5 cavity that's imaginable drugs come in.

6 Again, we kind of alerted our staff to be on the lookout
7 and just kind of keep visual surveillance over visitors. We do do
8 searches, that if we have some suspicion that a certain person is
9 packing, we certainly stop it at that particular point and
10 continue with our search procedures.

11 One of the other things that we have been successful in
12 getting through at Lancaster is a search warrant process where we
13 can actually, based on our own intelligence, go ahead and fill out
14 an affidavit, present it to a judge, and we have been successful
15 in getting authorization to serve a search warrant.

16 So again, those kinds of things --

17 CHAIRMAN LOCKYER: You mean inside? No, you can always do
18 that.

19 MR. ROE: Yes, we can always search inside.

20 CHAIRMAN LOCKYER: With a visitor?

21 MR. ROE: That's correct, with a visitor.

22 CHAIRMAN LOCKYER: So you could do it during that course of
23 the time that they're visiting?

24 MR. ROE: That's correct. We can serve the search warrant
25 and execute the search warrant at the same time.

26 CHAIRMAN LOCKYER: Is there anyone present who would wish
27 to comment? I think we're probably ready to move along.

28 Senator Ayala.

1 SENATOR AYALA: One more question.

2 The Department has just recently had hearings on regulatory
3 language for family visits to the prisons.

4 Are those rules implemented yet, the ones that deal with
5 visiting, family visits to the inmate?

6 MR. ROE: Not totally implemented, but again, speaking from
7 Lancaster, some of those aspects of the new bill are already in
8 place at Lancaster.

9 When we start talking about the custody designation of
10 inmates, you notice that part of that language calls for the
11 closed custody of the ones that have live sentences to do, the
12 ones that commit in-prison felonies, the ones that get narcotics
13 violations. Those would meet the criteria.

14 My place has a closed custody designation so they don't
15 visit now, anyway.

16 SENATOR AYALA: The inmates haven't demonstrated any
17 feelings one way or the other pertaining to the new regulations?

18 MR. ROE: I guess I was kind of unique in that format, too,
19 because when they first started talking about that bill, I had one
20 full unit at my prison that went on a hunger strike. It was
21 really something that was, you know, a message to us. It was a
22 time when, you know, all of the gangs truces were -- I mean,
23 eliminated across gang territory. All the races were united.
24 That was a 1,000 man facility, and we only had one person that
25 came out for the evening meal when they started.

26 So yes, as far as a message, they were trying to send out a
27 message at my place that they were opposed to those changes.

28 SENATOR AYALA: Thank you.

1 CHAIRMAN LOCKYER: What happened? Are they hungry?

2 MR. ROE: We certainly waited until they got hungry. You
3 know, after a couple of days and their canteen ran out, they did
4 find time to come out.

5 And the one thing that I would like to say about that
6 entire event is, typically when you have that much solidarity,
7 there are typically some staff injuries or something that occurs.

8 This lasted for about three days. We got over it without
9 one staff injury, without one inmate injury. That's something I'm
10 pleased about.

11 CHAIRMAN LOCKYER: What's the pleasure of the Committee?

12 SENATOR AYALA: I'll move the confirmation of Mr. Roe.

13 CHAIRMAN LOCKYER: Motion by Senator Ayala. Call the roll.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Lewis.

17 SENATOR LEWIS: Aye.

18 SECRETARY WEBB: Lewis Aye. Senator Petris. Senator
19 Beverly. Senator Lockyer.

20 CHAIRMAN LOCKYER: Aye.

21 Let's leave it on call again.

22 [Thereupon, Senator Petris
23 later returned to Committee
24 and voted in favor of the
25 confirmation, making the
26 final vote 4-0.]

27 CHAIRMAN LOCKYER: Thank you, sir. You present
28 wonderfully, and good luck to you.

1 MR. ROE: Thank you very much, sir.

2 [Thereupon this portion of the
3 Senate Rules Committee hearing
4 was terminated at approximately
5 2:52 P.M.]

6 --oo0oo--
7

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, 1995.


EVELYN J. MIZAK
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

LISA HUGHES, Member
State Lottery Commission

STANLEY T. WANG, Member
Trustees of the California State University

SENATOR TOM CAMPBELL

MARY F. BERGLUND, Member
California Transportation Commission

DEAN DUNPHY, Secretary
Business, Transportation and Housing Agency

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CHAIRMAN LOCKYER: Appointees, Ms. Berglund, would you mind, since we expect at least Senator Ayala to be here soon, maybe it would be helpful if we wait for him, if it would be okay with you.

Lisa Hughes.

SENATOR LEWIS: Mr. Chairman and Senator Petris, it's my honor to present to the Committee for confirmation vote today my constituent and good friend, Lisa Hughes from Orange County.

Lisa's someone that I've known for several years now, and I've always been incredibly impressed by both her intellect and her hard work. She is an American success story. She's widely respected in Orange County. She's a very successful practicing attorney, specializing in family law.

She's also a CPA. And one thing that puts her in very good stead in Orange County is her commitment to building a better community. She's been very involved in a number of philanthropic and civic activities. One that I know that's near and dear to her heart is the Orangewood Foundation for Abused Children in Orange County. She gives an awful lot to the community, and she is, I think, a very well-qualified person for this post as well.

I'd like to present Lisa Hughes to this Committee.

CHAIRMAN LOCKYER: Thank you.

Being in the Lincoln Club probably doesn't hurt in Orange County, either.

Did you want to start with any comment at all? You're

1 welcome to, if you wish.

2 MS. HUGHES: No, Senator. I have no prepared text.

3 I'd be more than happy to answer any questions you would
4 have of me.

5 CHAIRMAN LOCKYER: You were appointed just about a year
6 ago?

7 MS. HUGHES: Not quite, October.

8 CHAIRMAN LOCKYER: What have you learned from that work so
9 far?

10 MS. HUGHES: Well, I've learned that it's quite a task.
11 We have close to a \$2 billion budget. Some countries don't run
12 on that type of a base. We're about the 52nd largest business,
13 if you want to count as a business in the State of California,
14 and I've learned that it's a tremendous responsibility.

15 CHAIRMAN LOCKYER: Have you had an opportunity to try to
16 figure out why the revenues sort of have peaks and valleys? Is
17 there some business analysis of that matter that you could share
18 with us?

19 MS. HUGHES: I specifically asked that question, because
20 that was obvious that we had done that. I found that there were
21 two answers to it.

22 Number one, that the cash flows respond almost in direct
23 proportion to the amount of advertising promotion we do. I asked
24 the staff to provide for me a study, and it verified that
25 response.

26 And lady luck plays the other part of it. As the funds
27 roll over, and we get to these large jackpots, then the fever
28 begins and the frenzy comes in, and we will escalate our revenues

1 based upon those two factors.

2 One I can control, and one I cannot.

3 CHAIRMAN LOCKYER: How about on the side of the budget? I
4 guess administrative overhead, that is excluding the advertising
5 expenditures, have increased pretty substantially in the last
6 nine years or so, maybe 50 percent or so.

7 Have you had a chance to figure out what's going on in
8 terms of the admin. expenditures?

9 MS. HUGHES: Quite frankly, not. I haven't been on the
10 Board that long, and I've been studying our administrative
11 allocation.

12 I do know that this year, we're supposed to come in at
13 somewhere like 15.2 percent instead of our 16 percent allocation.
14 And I have not had an opportunity to do a year-by-year comparison
15 or look at what specifics we can address that.

16 CHAIRMAN LOCKYER: There are other states, I guess, that
17 commit a larger segment of lottery revenues to education. Have
18 there been discussions during your time about what the
19 appropriate piece of the pie should be?

20 MS. HUGHES: No.

21 CHAIRMAN LOCKYER: Well, that may be a matter that needs
22 to be discussed over here, but I just note that New York, 41; New
23 Jersey, 42 percent; Florida, Illinois, 39.

24 Now, I don't know if they have comparable sales,
25 comparable advertising budgets, or whatever.

26 MS. HUGHES: It'd be interesting to know what they pay out
27 to the winners as well.

28 CHAIRMAN LOCKYER: Yes. I assume that means it's probably

1 a smaller piece to the winners, unless it's out of the overhead
2 advertising stuff. Probably worth a look.

3 Well, as an auditor, you, I guess, saw the Coopers and
4 Lybrand work. It was just before your tenure, I believe.

5 MS. HUGHES: What are we referring to, Senator?

6 CHAIRMAN LOCKYER: This was lottery security, that issue.
7 Does that ring any bell at all?

8 MS. HUGHES: That does not ring a bell.

9 CHAIRMAN LOCKYER: Well, our notes indicate there was a
10 Coopers and Lybrand security audit in '92, and that SRI is in the
11 process of preparing one currently.

12 MS. HUGHES: It's my understanding that there's going to
13 be a report or something along that line presented to us shortly
14 in the near future, and I'll be addressing my attention at that
15 time.

16 CHAIRMAN LOCKYER: Other Senators want to ask anything
17 here?

18 Is there anyone present who would wish to make any
19 comment?

20 Are you allowed to review advertising programs before
21 they're on the air? As a Commissioner, do you get to see what
22 they plan to promote?

23 MS. HUGHES: I believe that I'm allowed to. Whether or
24 not I've taken the opportunity to review the advertising that is
25 coming forward, I haven't had that opportunity yet.

26 But I see nothing that would prevent me from doing that.

27 CHAIRMAN LOCKYER: But they don't do it as sort of a
28 routine thing?

1 MS. HUGHES: They give a marketing and media presentation
2 at each meeting, and they sort of review in generalities what our
3 upcoming promotions are. They show us specific promotions on
4 occasion, but as far as reviewing with particularity the
5 advertising, I haven't had that opportunity yet.

6 I must say, we have a couple pretty good spots, though, if
7 you've seen them.

8 CHAIRMAN LOCKYER: The boat with all the gold?

9 MS. HUGHES: I like the motorcycle. The Six Million
10 Dollar Man, we all have our favorites.

11 CHAIRMAN LOCKYER: I like Spud.

12 [Laughter.]

13 CHAIRMAN LOCKYER: Either the frogs or the ants, take your
14 pick.

15 Well, you have a computer system, and I guess like every
16 place else in state government, they've had their problems.

17 How have they worked out with respect to the Lottery?
18 Have there been any discussion with your system?

19 MS. HUGHES: Oh, that's one of my favorite topics.
20 There's been a lot of discussions over the computer systems.

21 CHAIRMAN LOCKYER: What's going on?

22 MS. HUGHES: Well, I think in the procurement process,
23 we've just replaced a number -- or we're going to be replacing
24 the IBMs, and it was my particular question as to whether or not
25 we're spending appropriate amounts of money on software and
26 computer systems.

27 And I think I coined a new phrase around the Lottery:
28 industrial strength computers that we've ordered.

1 The computer systems for the games themselves, of course,
2 are treated differently, and we're always looking to improve that
3 technology and keep that up and running.

4 But it's something that I'm trying to keep a close eye on.
5 We spend a lot of money on computer enhancements, software, and
6 trying to bring the best technology we can. You can imagine the
7 enormity of the task.

8 CHAIRMAN LOCKYER: But not problems we should learn about
9 in computer systems or software?

10 MS. HUGHES: Well, computers always bring about problems.
11 But specifically, none that the Lottery isn't addressing in the
12 ordinary course of business.

13 I mean, we're trying to bring the accounting system into
14 parity. We've got a study going out. That's one of my issues,
15 is that I believe that our accounting system is somewhat archaic.
16 We're putting out a bid to restructure the entire and automate
17 the accounting system, the audit function.

18 One of the things that I'm going to be looking at, would
19 like to look at, was the accountability function: how often
20 we're audited. We're audited by the internal audit; we're
21 audited by the State Controller. We're audited by outside
22 auditors, and do we need to be spending that amount of money on
23 these numbers of audits, and program auditors which are
24 repetitive.

25 I notice that the State Controller's Office has just put
26 out a study saying that she is questioning whether or not we are
27 allocating too many resources to the State Lottery for audit
28 functions, and that's something that's near and dear to my heart.

1 CHAIRMAN LOCKYER: Has anyone indicated any particular
2 relevance of the Governor's Executive Order on affirmative action
3 to Lottery Commission contracting or other matters?

4 MS. HUGHES: Well, I spoke with our -- I believe it used
5 to be called Affirmative Action Coordinator, and now going to be
6 called by a new name, Equal Access Opportunity, or something like
7 that.

8 I think that the particular relevance, I don't think we're
9 going to see much of a change because the Lottery itself is
10 pretty substantially in parity, if not over parity in certain
11 areas. And I think we're not going to see much of a change in
12 what we've been doing.

13 CHAIRMAN LOCKYER: So, no one has suggested you need to
14 change any particular practices as a result of the Executive
15 Order?

16 MS. HUGHES: No, other than we're going to rename the
17 function.

18 CHAIRMAN LOCKYER: Yes, but otherwise no.

19 MS. HUGHES: Specifically, other than --

20 CHAIRMAN LOCKYER: There's no effective contracting
21 population, or something at least, that's been brought to your
22 attention?

23 MS. HUGHES: No, and that's another issue. I don't think
24 that that's been dealt with yet.

25 I understood your question to mean affirmative action
26 within the Agency itself.

27 CHAIRMAN LOCKYER: Both within and contracting outside.

28 MS. HUGHES: My understanding is that as far as

1 contracting, that hasn't affected it or been part of the
2 Executive Order directly. I don't know about indirect effects.

3 And as far as the Agency itself, I don't see that it's
4 going to be much of a change overall.

5 CHAIRMAN LOCKYER: There may be a legitimate question
6 about what authority the Governor would have to affect the
7 contracting practices of an independently created commission of
8 this sort. I don't know the answer to that, but perhaps there
9 would be a constraint.

10 Anything else? Senator Petris.

11 SENATOR PETRIS: If I may, on demographics, I don't know
12 how this is studied, but under the law the Agency is supposed to
13 study the demographics of the people who buy tickets because of
14 the apprehension regarding the disproportionate number of the
15 lowest income people buying tickets, and in proportion to their
16 incomes, it's higher than others.

17 Has there been any report to you on the Board since you've
18 been on on that subject?

19 MS. HUGHES: I have those statistics. And in fact, we've
20 let a specific contract coming out to study more clearly -- I
21 think it went to UCLA, much to my chagrin, being from USC -- to
22 study more clearly the attributes of the lottery buyer, and who
23 it is, and where we're at.

24 Those statistics have been presented to me. I don't have
25 them memorized, Senator.

26 SENATOR PETRIS: Is there anything in the report related
27 to the impact of advertising?

28 You know, some of the criticism is that the advertising is

1 really aimed more at the lowest income level than the others.

2 That's one of the reasons they buy more tickets.

3 Have you been given that impression, or is that just one
4 of the criticisms?

5 MS. HUGHES: I believe that's one of the criticisms. I
6 haven't specifically had anything brought to my attention that
7 would lead me to that conclusion.

8 SENATOR PETRIS: How about in your review of the
9 advertising? Oh, you said you didn't get to review the
10 advertising beforehand.

11 MS. HUGHES: I've reviewed the advertising after the fact,
12 or as it's about to be presented.

13 It will be presented. Certain of the promotions are
14 presented at the Commission meetings just before they're about to
15 go forward.

16 As far as taking an affirmative action on what
17 advertising, I haven't been personally involved.

18 SENATOR PETRIS: Have you seen anything in the advertising
19 that influences the degree in which the lowest income people
20 participate?

21 MS. HUGHES: Senator, honestly, I don't think I was
22 looking for it, so I haven't gone through the thought process of
23 whether or not our advertising is targeted to a particular
24 economic strata.

25 SENATOR PETRIS: I guess it didn't have any impact on you;
26 so, maybe it wasn't there.

27 MS. HUGHES: And I wasn't looking for it, honestly.

28 SENATOR PETRIS: So there have been no changes made in the

1 advertising plans since you've been on there?

2 MS. HUGHES: Oh, sure there have.

3 SENATOR PETRIS: I mean the targeting. What kind of
4 changes have there been?

5 MS. HUGHES: The advertising, one of the things that I
6 asked for and was presented to me was, what is the effect of the
7 advertising dollar on the amount of sales. And I was convinced
8 by the reports that were given to me that when we spend an
9 advertising dollar, that it does reap a substantial benefit and
10 increase sales. That step was just a few months ago when I had
11 that information brought to us.

12 The Commission has increased our advertising budget within
13 our administrative operating confines, and we're spending a great
14 deal more money -- not a great deal, but substantially enhanced
15 dollars -- on promotion, marketing, and advertising. And that's
16 for the overall benefit of increasing sales to increase the
17 revenue to the schools. And that, in fact, is what happens.

18 The two things that my conclusions are: the more we spend
19 on advertising -- you know, it's media on politics; media in the
20 lottery -- we make money; and the other thing is luck, when those
21 rolls hit.

22 SENATOR PETRIS: Returns to the schools, has the school
23 budget received any more than four percent, as originally
24 predicted, in the time you've been there?

25 MS. HUGHES: Four percent?

26 SENATOR PETRIS: Yes.

27 MS. HUGHES: Thirty-four percent?

28 SENATOR PETRIS: No, not the percentage of the lottery

1 money, but percentage that means to the school budget.

2 Let me phrase it another way. When this was on the
3 ballot, everybody thought, including those who read the pamphlet,
4 that we're going to solve the problem of financing the schools.
5 To this day, I get questions: what happened to all that lottery
6 money? I voted for the lottery, and I still have to pay taxes
7 for the schools, and this and that.

8 Well, the original pamphlet pointed out that it was not
9 expected that more than four percent of the school budgets would
10 be paid for out of the lottery.

11 Is that figure still remaining at four percent, or is it
12 higher or lower?

13 MS. HUGHES: I think it's lower. I think it's lower than
14 four percent.

15 SENATOR PETRIS: More like three? One and a half?

16 MS. HUGHES: No, I think over two; between two and three
17 percent.

18 But I can tell you that we're doing everything we can to
19 increase the revenue -- promotion, advertising and those efforts.

20 That's why we're in existence, is to make money to hand
21 over to the schools. That's our only job.

22 SENATOR PETRIS: I think that would come as a great
23 surprise to the ticket buyers. They think you're in existence to
24 give them a lot of money.

25 MS. HUGHES: That, too.

26 CHAIRMAN LOCKYER: The next most asked question, after why
27 aren't the schools blessed with lots of money, is: why don't you
28 have more small winners and fewer big winners?

1 Have you heard that one a thousand times? I assume it's a
2 marketing answer, but for the record, you might as well make it.

3 MS. HUGHES: The first most asked question is: can I give
4 you the six numbers?

5 CHAIRMAN LOCKYER: Ah, I hadn't thought of that one.

6 MS. HUGHES: And the answer to that is no.

7 But the second-asked question, and we have done something
8 like that. We have a game now that, if you purchase \$5, there's
9 seven extra numbers, and you can win a \$200,000 lump sum budget.

10 But the phenomenon is that people don't think \$5-10
11 million is a lot of money. Now, I've not figured that out. But
12 what happens is, when the pools -- I mean, I'd take it -- 3
13 million, 10 million -- we don't get a large number of players
14 proportionally. But you get up to a 25, 30, 50 million dollar
15 jackpot, then we get into a feeding frenzy.

16 And that's why. It's because if we were to bifurcate and
17 split the pools, we wouldn't be able to get that proportionate
18 rise.

19 CHAIRMAN LOCKYER: What's the pleasure of the Committee?

20 SENATOR LEWIS: Move.

21 CHAIRMAN LOCKYER: We have a motion for confirmation.
22 Call the roll.

23 SECRETARY WEBB: Senator Ayala. Senator Lewis.

24 SENATOR LEWIS: Aye.

25 SECRETARY WEBB: Lewis Aye. Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
28 Lockyer.

1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Lockyer Aye.

3 CHAIRMAN LOCKYER: Why don't you leave the roll open for
4 Senator Ayala.

5 Good luck to you. Nice to see you again. Hope things
6 work out well.

7 MS. HUGHES: Thank you, Senator.

8 CHAIRMAN LOCKYER: All right, we have Senator Campbell
9 present.

10 Why don't we give Senator Ayala a little bit more time.

11 Mr. Wang and Senator Campbell, if you'll come on up.

12 I used to have a high opinion of this gentleman.

13 [Laughter.]

14 SENATOR CAMPBELL: Mr. Chairman, if I might be recognized.

15 Your constituent business-wise, Mr. Wang. My constituent
16 residence-wise.

17 CHAIRMAN LOCKYER: That's correct.

18 SENATOR CAMPBELL: We're privileged that Mr. Wang's
19 business, Pantronix, is located in Senator Lockyer's district; a
20 high technology firm of great success, founded by Mr. Wang.

21 And I'm fortunate that he lives in Los Altos Hills, which
22 is in my district.

23 CHAIRMAN LOCKYER: He's talked with me about how his ideal
24 is sort of a virtual corporation.

25 And I was thinking about the virtual Senator, and what
26 that would be like. The holographic perfect Senator.

27 SENATOR CAMPBELL: We would all stay at home, and people
28 would have to deal with our holographic images for lobbying

1 purposes.

2 CHAIRMAN LOCKYER: Might be a break-through, clones.

3 Anyhow, please, go ahead.

4 SENATOR CAMPBELL: This is why, perhaps, we're offering
5 Mr. Wang for the State University Board.

6 I first met Mr. Wang in 1987. I've known him as a real
7 pillar in our community in two particular respects. One in the
8 high technology community. He has been a leader in the
9 development of and expansion of use to schools of technology, and
10 interested in particularly that aspect of education.

11 The other is in the Asian-American community, where he is
12 one of the founders of the Monte Jade Society and the Asian-
13 American Manufacturing Association. The Monte Jade Society
14 organized at the start to bring closer relationships between
15 manufacturers in Taiwan and the United States, expanded to
16 mainland China as well, and really serves as a model for
17 breaching the diplomatic difficulties posed by the separation of
18 those two countries, to the economic reality that we trade with
19 both.

20 Lastly, I just want to relate a personal story, that I
21 have known Mr. Wang for a long period of time. I try to go
22 around and see a number of my friends. And totally independent
23 of his position at the CSU since last November, I went to see him
24 last summer and asked him what the most important thing was to
25 the state. And he sat down and lectured me for an hour on higher
26 education and what could be done to improve that in our state,
27 with particular emphasis upon, if you will, the people's college,
28 what might be available to the greater majority of Californians.

1 I was most impressed by that fact. I am most impressed
2 with him, and I offer him to the Committee for your approval.

3 CHAIRMAN LOCKYER: Thank you very much, Senator.

4 SENATOR CAMPBELL: Thank you, Mr. Chairman, and thank you,
5 colleagues.

6 CHAIRMAN LOCKYER: I know you probably need to return to
7 committee.

8 SENATOR CAMPBELL: I'm chairing Housing, by grace of this
9 Committee.

10 CHAIRMAN LOCKYER: Go ahead.

11 SENATOR CAMPBELL: Thank you very much.

12 CHAIRMAN LOCKYER: Mr. Wang, why don't you, perhaps, begin
13 if you want to tell us any personal history that you'd like us to
14 be aware of, but for sure, talk about a short version of the hour
15 lecture that you gave Senator Campbell, about how to improve
16 schools or the state.

17 MR. WANG: In general speaking, I think of education as
18 some certain degree similar to the run of business. You're
19 talking about efficiency; you talk about quality.

20 So, we have to improve the efficiency to cut down the
21 expenses. Also, we have to provide a quality education to the
22 graduates.

23 As a user, because we do have lot of graduates from, you
24 know, CSU, UCs, we know to a certain degree the quality of
25 education declined. So from ways from outside of view, maybe
26 have to bring to the CSU how to improve the quality of education.

27 CHAIRMAN LOCKYER: Do you have the magic wand? What would
28 you do to make improvements?

1 MR. WANG: Well, I don't have the magic wand, but I think,
2 you know, general magic with hard working, work smart. I think
3 everybody is joint efforts, not only CSU and Board of Trustees,
4 even I think the faculty, and all the presidents, Chancellor's
5 Office. I think it is a joint effort, of course, very important.

6 Majority of funding from the Capital, also need support
7 from the Capital to make our education better.

8 CHAIRMAN LOCKYER: Do you want to mention at all your
9 personal history just so we will have that discussion?

10 MR. WANG: Yes. How much time do I have? Whole day?

11 Shall I do like, you know, briefly describe my experience
12 and my background.

13 Of course, I was born in mainland China, then moved to
14 Taiwan to escape the Communist Revolution. In 1968, I was sent
15 to the States as an international coordinator by the Ford Motor
16 Company, Micro Electronic Division.

17 Daytime, I work full-time. Nighttime, I went to Temple
18 for my MBA degree in Philadelphia. Of course, the most
19 outstanding alumni from Temple is Bill Crosby. Nobody knows me,
20 but everybody knows Bill Crosby.

21 After I graduate from school, I come to California.
22 "Young man, go west," so I do follow that instruction and advice
23 and went to the west in 1971. I worked for several start-up
24 companies. In 1974, I started my own company, called Pantronix,
25 with my brother, and we start with two and a half, the half is my
26 wife. She work full-time in Memorex as a senior accountant;
27 nighttime, come to help us to do some administration accounting
28 work.

1 With 21 years in joint efforts, with all employees in the
2 company, we gradually expanded to be international operation. We
3 have a facility in overseas, and we have over employee -- over
4 2,000 employees. And we are very proud that with that 21 years,
5 we never had to lay off, and I'm very conservative.

6 The reason I come to California because I work for Ford.
7 They had, you know, back in 1970-71, a particular recession, so
8 they close whole division. So at that rate, it took my heart. I
9 think of the concern of people. Make sure under my management, I
10 wish will never happen to my company.

11 So, we are very conservative in every aspect. So far, we
12 are doing international operation; we serve over 400 customers,
13 including IBM, Intel, MD, SP, DOD, Defense Department, Lockheed
14 with aerospace communication, telecommunications, and the
15 computer industry.

16 CHAIRMAN LOCKYER: I think, just to describe the niche as
17 I understand it, this is the packaging around chips that a lot of
18 the different chip manufacturers, there aren't very many that
19 make these. Mr. Wang does.

20 I hope I'm correctly describing that.

21 MR. WANG: Yes, that's correct, Mr. Chairman. We are
22 providing, you know, packing and serving to the semiconductor
23 industry.

24 I believe education is very important. I'm very honored
25 and pleased that society provide me an education and opportunity
26 for my career.

27 So, to appreciate the society has done to me, I
28 participate a lot, you know, in social activities, donate a lot

1 of my time, financial support, to a lot of nonprofit
2 organizations. Just a way to repay my success with the society
3 and share with other people.

4 Also, I believe that education is the most important for
5 the society for future growth and for future prosperity. That
6 was reason and that's my reason, that's my belief, I'd like to
7 serve the CSU Board of Trustees; hoping with my experience,
8 wisdom, able to bring some new idea and to improve education
9 quality and efficiency.

10 CHAIRMAN LOCKYER: Questions? Senator Petris.

11 SENATOR PETRIS: I'd like you to pick up that magic wand
12 again.

13 MR. WANG: Yes.

14 SENATOR PETRIS: And ask you, if you had that wand, you
15 could do anything you want, you all the power to improve our
16 present system, the Cal State system, what specifically would you
17 do?

18 MR. WANG: If I got a magic wand, I hope that some day CSU
19 can be, number one, become the first choice, for all the
20 students.

21 Number two, we could admit all the qualified students to
22 be the students.

23 SENATOR PETRIS: In that connection, what is your policy
24 towards fee increases? We've had a lot of fee increases in the
25 last few years?

26 MR. WANG: Personally, I guess the fee increase same like
27 year-around business, you don't want to increase the price
28 because you're going to decline the customer base. Especially

1 for the education, there are social obligations, social
2 responsibility, especially if you want to provide that kind of
3 service to all the qualified use, meaning to the college; giving
4 equal opportunity and to pursue higher education.

5 So personally, I'm against the fee increase. However, we
6 certainly have to be realistic, where we have to come up with the
7 necessary funding to run the school. Maybe we can improve the
8 efficiency and run school more efficiently so we don't need that
9 much expenses to run that same quality of education.

10 SENATOR PETRIS: Have you considered a third source, and
11 that is getting more money from the state to run the school?

12 MR. WANG: Yes. As a matter of fact, read the high news
13 that San Jose State at present, I believe are minimum ways we can
14 do to improve the situation besides, you know, we get our funding
15 from the Capital.

16 I think there is lot of funding out there in the private
17 industry. They're organizing a meeting for the President of the
18 San Jose State to meet with all the presidents in the Silicon
19 Valley. There are a lot of programs we can join to work together
20 to bring the funding to the school, also to improve the private
21 industry program in the future. Utilize the school resource.

22 SENATOR PETRIS: Are you talking about outside funding?

23 MR. WANG: Yes, even my vision might go beyond California.
24 I think that with California CSU resource combined, we can do a
25 lot of programs because it should become specialty and
26 personality. We can work with a lot, even outside the country,
27 to jointly develop certain program and get grants, and some
28 project to work effort to bring additional resource to the CSU.

1 So, my thought, I want to reduce the dependence to the
2 Capital in long term.

3 SENATOR PETRIS: In other countries, they don't charge
4 anything to the students to go to the university. And when I
5 point that out, the answer is, well, there's a much small
6 percentage of students in those other countries that are able to
7 go to the university in the first place. We have a much higher
8 percentage, and it costs most, and therefore we have to have some
9 payments made by the family and by the students.

10 I'm curious about Taiwan. You're a graduate of the
11 University there.

12 MR. WANG: Yes.

13 SENATOR PETRIS: Do they have high fees for students, or
14 low fees, or no fees at all?

15 MR. WANG: I graduate about 25 years ago. Of course, now
16 probably a little bit changed.

17 Of course, back to 25 years ago, Taiwan was undeveloped
18 country.

19 Without low fee, I don't think you have opportunity. The
20 reason I so appreciate this society provide me the opportunity.

21 So, to answer that question, that's true. Generally
22 speaking, Taiwan, yes, it is still relatively lower.

23 SENATOR PETRIS: They were lower there?

24 MR. WANG: Lower than the in the States.

25 SENATOR PETRIS: And you favor that policy here?

26 MR. WANG: Yes, in principle I do.

27 On the other hand, I want to be practical. How much the
28 society is able to support. So we have to jointly, you know,

1 come to some ways and means to fulfill, achieve, that dream.
2 Have to support all the people want to go to college with the
3 necessary qualifications.

4 SENATOR PETRIS: Thank you.

5 CHAIRMAN LOCKYER: There's currently an affirmative action
6 debate, at least before the University of California. I'm not
7 aware that that's been an active discussion for the State College
8 Board yet, but perhaps you could just bring us up to date, first
9 of all, on whether there has been some discussion regarding
10 admissions policy, or hirings and promotions, or not?

11 MR. WANG: For that one, we have some discussion for
12 affirmative action in the last meeting. But, you know, we
13 discuss certain things in general speaking. CSU doesn't have a
14 quota. And the principle be based on the qualification.

15 And so, of course, there's a very complex question. I
16 don't have a single answer for that one.

17 Generally speaking, we consider it from all different
18 angles for the social, economic, and the fairness. Then we can
19 view individual cases by case to make a necessary decision to
20 justify every decision.

21 CHAIRMAN LOCKYER: Is there some anticipated vote in
22 future meetings, or is it just a report of a general nature?

23 MR. WANG: We don't plan any voting for the affirmative
24 action, just report in last meeting.

25 SENATOR LEWIS: Mr. Wang, do you have any more
26 observations, following up on Senator Petris's question about the
27 magic wand? Is there anything else that you haven't shared with
28 us yet about the prescription you might have for improving CSU?

1 MR. WANG: Yes. My goal also, I hope, general speaking,
2 my understanding California there is three levels education:
3 USC, CSU, and the community.

4 I hope that someday, CSU will be good as the UC, and
5 especially in the Bay Area, you know. San Jose always shut out
6 by UC Berkeley and Stanford. I think that jointly, we can
7 improve that quality level.

8 We can also make and improve the CSU image to be global in
9 our community and global in university, able to attract more
10 students to the CSU.

11 SENATOR LEWIS: Senator Ayala.

12 SENATOR AYALA: There's a lot of students that are unable
13 to get their undergraduate degree because the classes are
14 unavailable to them at CSU. Therefore, it's taking them five,
15 six years to graduate when they could in four.

16 I don't know if this question came up before or not.

17 What are you folks doing about that?

18 MR. WANG: I think about that one, I think California
19 wider problem even UC have similar problem. Basically speaking,
20 there are enough funding to hire more faculty and to have more
21 class available.

22 My goal, I wish -- I made earlier remark -- we want to
23 reduce that kind of problem for the student. Able to admit all
24 the qualified students to the school and improve the efficiency
25 of the, you know, school operation.

26 With our joint efforts, I hope able to reduce that
27 unnecessary difficulty to the student so they able to graduate in
28 four years.

1 SENATOR AYALA: But it is a problem that you recognize?

2 MR. WANG: Yes, it is a problem now.

3 SENATOR AYALA: Can you see a time when it will back to
4 what it was a few years back, when they could graduate in four
5 years if they so desired to do so? Do you think there will be a
6 time when they'll be able to do it again?

7 MR. WANG: Yes, I believe that I think one of the
8 education industries, same as, you know, private industry, like
9 IBM, was a first-class company in 1960 and 1970 and 1980, but in
10 1990, got a problem.

11 So my view always, you know, you should attack different
12 problem, you have a different new ways and means to deal with the
13 new problems. You can't use the old ways to deal new problems.

14 I think, you know, even the schools have to find a better
15 way to improve their efficiency, cut down their costs, make more
16 efficient so such as you mentioned, cause a better ability, a
17 better quality, of their availability to the students. That's my
18 goal.

19 We should be able to bring, you know, private industry
20 experience, see how we can improve the school operation.

21 SENATOR AYALA: Thank you.

22 SENATOR LEWIS: Mr. Wang, how many employees do you have
23 at Pantronix?

24 MR. WANG: In San Jose, we got about 250 people. In
25 overseas, we have about 1500 people.

26 SENATOR LEWIS: At the San Jose facility, what's been your
27 experience about the quality of your job applicants?

28 MR. WANG: Speaking truly, I'm disappointed. The reason

1 I'm very anxious to join the CSU.

2 We had a lot of graduates from San Jose, even from UC
3 Berkeley. We found a lot of time their understanding of logic is
4 not very practical. Even we have to run internal training school
5 in the company. We spend lot of resources training people.

6 That's supposed, you know, be the responsibility of the
7 school. But unfortunately, those graduates are not qualified to
8 work, so we have to spend additional resources training people.

9 That's also put the, you know, private industry at
10 disadvantage competitive edge compared with some other companies,
11 such as Japan, Taiwan, because their quality is much better. So,
12 the company doesn't have to spend extra efforts to train those
13 new employees.

14 SENATOR LEWIS: Have you noticed a marked decline in
15 skills in recent years, or has this been a problem for some time?

16 MR. WANG: The skill in certain degree has improved
17 because modern technology, you know. Maybe few good things, it's
18 a better computer, you know, skill. So to certain degree, the
19 efficiencies are better.

20 But to me, that's a minor problem. The most important
21 problem, the school's supposed to teaching people the principles.
22 How do you apply the principle to real world.

23 I see a certain degree, the school did not do a very good
24 job in that aspect.

25 I hope that with my, you know, industry experience, able
26 to combine the principle, purer principle only, plus real
27 practical things in aptitude and gradual enter the market very
28 easily, also with the benefit to the private industry.

1 SENATOR LEWIS: From your matriculation in Taiwan, are
2 there any lessons to be learned for us here about the public
3 education system in Taiwan?

4 MR. WANG: Yes. As a matter of fact, I'm thinking maybe
5 we should go to overseas to take a look. Not only Taiwan; Japan,
6 China. I think lot of lessons we can learn from them.

7 Of course, they're not perfect. They have problems, too.

8 I think changing idea always a very good way to
9 understand, so we can always learn some other people's merits to
10 provide efficiency.

11 SENATOR LEWIS: Senator Petris.

12 SENATOR PETRIS: Have you expressed your disappointment to
13 the institutions from whom you draw the students?

14 MR. WANG: I think you don't need to express. I think it
15 will be more positive way.

16 You know, you don't want to say I'm not happy. But I want
17 to go be part of the way trying to make a better suggestion how
18 to improve the operation and the system. I think only with that
19 attitude, able to make a real progress.

20 SENATOR PETRIS: What kind of reaction do you get?

21 MR. WANG: In general speaking, very positive, either in
22 the Board of Trustee, also in the Chancellor's Office. Even with
23 certain persons.

24 I think they want to listen to new idea. And they also
25 have good intention, want to do good job.

26 SENATOR PETRIS: How much of the problem belongs with Cal
27 State, and how much of it is from K-12, from high school?

28 MR. WANG: I think, you know, like I say, garbage in,

1 garbage out. Sorry to use that word.

2 In the K-12, you know, your quality very poor. You cannot
3 expect a high education tend to better job. You're going to
4 waste social resource to remediate this underqualification from
5 K-12.

6 But we did discuss during the meeting before, because we
7 spend a lot of money for, you know, remedial education. To
8 higher education, in certain way, it is a waste.

9 My personal view, I think for short-term, there no way.
10 You have to spend the money. But for long-term, have to improve
11 the K-12 education. So, everybody admit to the high education,
12 it is a dequalify. So you have to spend additional social
13 resource to re-educate the students supposed to be qualified, you
14 know, form K-12.

15 SENATOR PETRIS: How much do you spend on remedial
16 education now?

17 MR. WANG: My understanding, about \$9 million.

18 SENATOR PETRIS: Is that for the whole system?

19 MR. WANG: Yes.

20 SENATOR PETRIS: I thought it was a lot more than that.
21 Maybe things are improving.

22 MR. WANG: Yes. That's my understanding, \$9 million.

23 SENATOR PETRIS: Is there any kind of program between Cal
24 State and the feeding high schools to help them raise their
25 standards?

26 A long time ago, UC used to do that. They used to send
27 people into the high schools to see how the teachers were doing
28 there in teaching the students, and making periodic reports.

1 UC, for example, had some schools that were designated
2 university schools. We had a University High School in Oakland,
3 and they concentrated on that school and sent some of their best
4 people to help the system.

5 Does Cal State do any of that?

6 MR. WANG: Yes, the Cal State, they have some kind of
7 meeting with the community college. Some K-12 they first enter
8 the community college before they enter the CSU. So, we are
9 working with the community college.

10 My understanding is that October, we going to have a joint
11 meeting with the community college in Sacramento to talk about
12 how we can improve the quality of education. I think that's a
13 part of the way to improve.

14 I also believe K-12 education is not just a school
15 responsibility, even include the parents, include the society.
16 So my belief, you know, education isn't just school only. That's
17 the whole society's responsibility, equal with them.

18 SENATOR PETRIS: How do we get that idea across?

19 MR. WANG: If I got a magic wand, I think I can make that
20 happen.

21 I think that with education, with, you know, parents, even
22 working they become very important.

23 SENATOR PETRIS: I'd like the record to show that we need
24 to order some magic wands.

25 [Laughter.]

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN LOCKYER: Mr. Wang, I just would want to mention
28 that at least the attitude of most Members of the Senate is that

1 we're going to do our very best to find additional monies to
2 support the State College system. But if we fail for some
3 reason, because of lack of will or agreement from other people
4 that have to agree, we still hope that there won't be student fee
5 increases.

6 We understand that there'll be a lot of pressure to find
7 the money somewhere, and obviously I don't expect you to make any
8 pre-commitments, but we're counting on you to be intelligent and
9 independent in ways that you've demonstrated before to help solve
10 the problem in ways that don't simply burden the student
11 population and their families.

12 I understand we've had a thorough hearing and discussion.
13 It's always nice to see you.

14 The only thing you should have done when I visited with
15 you last fall is inform me of how the electronics industry was
16 going to be doing in the stock market this spring.

17 [Laughter.]

18 CHAIRMAN LOCKYER: So, shame on you for no information.

19 But now, the follow-up question is, is it going to
20 continue, or where is the summer slump?

21 MR. WANG: Mr. Chairman, if I were warned, maybe I would
22 do that first.

23 CHAIRMAN LOCKYER: Right. Thank you very much.

24 What's the pleasure of the Committee?

25 SENATOR PETRIS: Move.

26 CHAIRMAN LOCKYER: We have a motion for confirmation.
27 Call the roll, please.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye. Senator Lewis.

3 SENATOR LEWIS: Aye.

4 SECRETARY WEBB: Lewis Aye. Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
7 Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Four to zero.

10 CHAIRMAN LOCKYER: Thank you and good luck, sir.

11 MR. WANG: Thank you, Senator.

12 CHAIRMAN LOCKYER: We have one on call, Senator, if you
13 would like us to lift the call for Lisa Hughes, a Member of the
14 State Lottery.

15 SECRETARY WEBB: Senator Ayala.

16 SENATOR AYALA: Aye.

17 SECRETARY WEBB: Ayala Aye. Four to zero.

18 CHAIRMAN LOCKYER: That's four to zero and also
19 recommended to the Floor.

20 Ms. Berglund and Mr. Dunphy, if you wish.

21 We had a thorough discussion in the previous meeting, as
22 you'll recall. It seemed to me that fairness dictated an
23 opportunity to kind of read the transcript of her own comments
24 and return for clarifications. That's partly why we're here now.

25 Mr. Secretary, did you want to start?

26 MR. DUNPHY: Thank you, yes, I do.

27 I'm Dean Dunphy, Secretary of Business, Transportation and
28 Housing Agency.

1 I particularly wanted to be here because I fostered, if
2 you will, Ms. Berglund's nomination to the California
3 Transportation Commission, and I think it would be helpful if you
4 were to understand why.

5 I began serving on the San Diego Transit Corporation or
6 Board in San Diego with Mary Berglund in 1986. And through a
7 period of several years, until I resigned in 1991, I knew Mary
8 Berglund to be a very qualified, public-spirited person whose
9 particular qualifications deserved a lot of merit and, at this
10 time, comment, if you will.

11 Her educational background is in economics, and at the
12 graduate level, she was summa cum laude at the University of
13 Nebraska, and also received her Ph.D. in economics. And her
14 specialty --

15 CHAIRMAN LOCKYER: Railroad cars.

16 DR. BERGLUND: Grain cars.

17 MR. DUNPHY: Indeed. As a matter of fact, that's the
18 lead-in to my statement that she made rail freight a specialty,
19 which she practiced for 20 years, both as an author and as a
20 teacher at UC Irvine.

21 She authored studies for the U.S. Department of
22 Transportation, for Caltrans, and for many other agencies.

23 She was a practicing consultant, and her teaching at
24 Irvine lasted over a period of a number of years.

25 Mary Berglund provides a transit and rail transportation
26 background which I judge to be very important for the California
27 Transportation Commission, which, as you know, and others in the
28 Legislature, have accused CTC of being a highway commission, not

1 appropriately cognizant of the needs for public transit and for
2 rail. And it is that balance that she brings to the Commission
3 as the only economist and the only person having the background
4 studies in rail, which should be so useful to the Commission at
5 this time.

6 And so, it was a pleasure for me to remind you both of my
7 knowledge and promotion of her membership, and to be able to tell
8 you about her background, and how I think it's an essential
9 component in the policy directions of the California
10 Transportation Commission.

11 With that, I will permit Mary to give her statements.
12 Thank you.

13 CHAIRMAN LOCKYER: Thank you very much.

14 DR. BERGLUND: Thank you, Senator.

15 Chairman Lockyer and Senators, I certainly appreciate the
16 opportunity to return. I realize I was a bit tongue-tied the
17 last time, and I realize that I probably should have made an
18 opening statement, because I think it would have presented my
19 views on transportation in a much more positive aspect.

20 And I also think it would have reflected better on the
21 essential role that the Commission plays in California
22 transportation issues.

23 There were a couple issues that I wanted to revisit;
24 several relate to my role on the CTC, and of course, my
25 background, which I appreciate Dean emphasizing.

26 I feel that serving on the CTC is a public trust. I think
27 it's a very important Commission in the State of California. The
28 Legislature has given it -- delegated it serious powers for

1 funding the state transportation improvement program and others.
2 And I feel that I was selected because I have good judgment in
3 that area, and because I could make a contribution to those
4 areas.

5 I feel also that I don't have a conflict of interest in
6 this area. I know the network of transportation goes across the
7 entire state, and it's a serious concern which I acknowledge.
8 And I wanted to, you know, bring that up.

9 I do feel that my qualifications, I have this depth and
10 breadth in transportation. The breadth, because it goes all the
11 way from the rail, to the urban transit, to rail passenger,
12 paratransit even. And the depth because it goes all the way from
13 working in the basement of the Interstate Commerce Commission,
14 that kind of thing, knowing the legal aspects of it, and also the
15 fiscal aspects of it, as well as kind of the esoteric models that
16 the academics use in their studies.

17 I feel that the CTC, as I said, is a very important
18 Commission. And I feel it has very important responsibilities to
19 the Legislature, and I want to emphasize to you that I will -- I
20 intend to carry those out.

21 We, of course, report to the Legislature. We analyze the
22 budget. The report on the implementation of transportation
23 programs, and I think these are all very serious issues. And I
24 intend to participate and to advise the Legislature and the
25 administration on these issues.

26 The ones that you were concerned about, the state issues,
27 the key transportation issues, first of all, there were four,
28 actually, with the contracting out issue. I think that that had

1 a lot of questions, and I know you're real concerned about that.

2 I felt that this issue was confused because there were two
3 questions, two aspects to it, and those were the things that got
4 confused. First, there's the aspect: is it ever cost effective
5 for the state to contract out in the public interest? Are there
6 peak workloads? Are there issues of timeliness, cost of delays,
7 that tend to make it necessary for the public interest to have
8 this contracting out.

9 The second question, of course, is it cost effective?

10 Now, SRI looked at the first issue, the issue of, is it
11 ever in the public interest to contract out. They came down on
12 the side of flexibility; the concept that the Legislature and the
13 administration really needed the flexibility when there are times
14 that Caltrans simply cannot get the job accomplished. I think
15 the seismic retrofit is one of those cases.

16 And I personally felt, and this is why my vote to approve
17 the SRI report, along with other legislative -- the key
18 legislative [sic] of the Senate, Assembly -- and Assembly
19 Transportation Committees, we voted to approve it because I felt
20 that you should have the flexibility that, you know, basically
21 resides in the Legislature to have the power, or in the Governor
22 and the Legislature have this power to determine when it might be
23 in the public interest.

24 This was not to say that contracting out should always be
25 done, or it should never be done, but just that you should have
26 the flexibility to do it when it seemed to meet the public
27 interest test.

28 I think the issue of is it cost effective is a very

1 critical one. I don't think the answer's all in here. I
2 reviewed the Alan Post study that you commended last time, and
3 not only that, I met Alan Post himself. And I was very impressed
4 with the conversation that we had.

5 Basically, I think we agree on this fact, that there are
6 times when short-term peak workloads, and other issues of
7 timeliness, and specialty needs such as environmental engineers,
8 the public interest really needs that flexibility. And I think
9 Mr. Post agreed. I won't read you his statement, but it was one
10 of his final conclusions.

11 And we also discussed some of the issues of the cost
12 effectiveness studies and felt that there are certain times and
13 certain of the studies where they have loaded overhead costs into
14 it, where they have not loaded overhead costs into these. Those
15 are the critical things in these cost allocation problems, and
16 it's very difficult to generalize over the whole spectrum of what
17 might happen in the future. I think that you have to take this,
18 you know, and have this flexibility.

19 That's why, I think, SRI decided that, you know, you
20 should not prohibit the Legislature from setting this kind of
21 policy.

22 As an economist, I know these are difficult issues. And I
23 would never say that contracting out is always cost effective. I
24 would never say that it is never cost effective. I just say it
25 depends upon the situation.

26 That's the reason that I came down on the side of allowing
27 the flexibility.

28 I'm not sure whether, you know, that clarifies anything

1 for you.

2 I also wanted to mention --

3 CHAIRMAN LOCKYER: Before you move on, I guess there's no
4 way to provide explicit directions with respect to this, but when
5 you say that specialty work or peak demand for engineering
6 services is an appropriate time to contract out, it suggests that
7 there's a significant ongoing base of state operations that is
8 pretty much a constant. And that then, when the peak occurs,
9 that's what goes outside.

10 Do I misunderstand you?

11 DR. BERGLUND: No, that's what I think I'm intending to
12 say.

13 CHAIRMAN LOCKYER: I understand.

14 DR. BERGLUND: If you wanted to hire, you know, just
15 needed five engineers, it would not be cost effective to contract
16 out for those. If you need 15 percent of, you know, specialty
17 engineers for Caltrans' workforce, you need buildings, you need
18 computers, you need desks, and that's when you have to load the
19 overhead costs on to some of those.

20 And I think that's what affects the cost effectiveness.

21 So, I understand that flexibility is a very serious issue.
22 And I believe -- but however, I believe the public interest
23 demands -- I'm concerned about the seismic retrofit and the
24 safety issue, you know, if this is not accomplished. And I
25 happen to think that this is one case that contracting out might
26 prove, you know, eliminating the costly delays.

27 And I think that, you know, the Legislature sets policy,
28 and they should be able to, you know, decide these things.

1 CHAIRMAN LOCKYER: I guess those of us who see, over the
2 years, public officials engage in politically popular anti-
3 government or anti-state employee commentary, worry about is that
4 that's what drives the policy, not sound economic decisions of
5 the sort that you've sketched.

6 DR. BERGLUND: That's a serious concern, and I think for
7 that reason, I just assume that the Legislature could inject
8 that, you know, flexibility into any time it was having to decide
9 whether this was a critical issue or not.

10 CHAIRMAN LOCKYER: Well, we're elected as well, so
11 sometimes we make the same kinds of comments that are maybe not
12 accurate, but still resonate with voters. So, we maybe rely more
13 on the independent expertise of agencies such as yours to
14 maintain some balance.

15 DR. BERGLUND: Well, I, you know, I want to assure you
16 that I am not for contracting out at any cost. This was in no
17 way -- I hope my comments did not reflect that in any way.

18 CHAIRMAN LOCKYER: You were going to go onto another
19 issue.

20 DR. BERGLUND: I was going to talk about the toll bridge
21 retrofit issue.

22 I think that there are -- I think everyone acknowledges
23 that there are really serious equity arguments on both sides,
24 whether we should fund the toll bridge seismic retrofit from the
25 State Highway Account, or whether we should fund it from the toll
26 bridge revenues.

27 And I think this is a topic that the Governor and the
28 administration and the Legislature have had disagreement about.

1 I know it's a topic that has had disagreement within the
2 Legislature. And I think this is the kind of thing that you are
3 elected, and I guess, you know, it sort of comes down to
4 political resolution.

5 I think the CTC's role in it is to emphasize that both
6 sides of the argument have serious equity rationale behind them.

7 CHAIRMAN LOCKYER: I'm not sure I know what the equity
8 argument is for the Southern California position.

9 DR. BERGLUND: Well, I think that they feel that Southern
10 California -- of course, I live in an area that has a toll
11 bridge.

12 The Southern Californians seem to feel that the seven Bay
13 Area counties would be getting more than their share out of the
14 State Highway Account monies. So, they feel that's an equitable
15 argument.

16 I understand that, you know, almost \$400 million of the --
17 sitting in the toll bridge account is from the Bay Area voters
18 authorizing the one dollar toll imposed upon themselves --

19 CHAIRMAN LOCKYER: Right.

20 DR. BERGLUND: -- for specific purposes. And so, they
21 have a serious equity argument, too.

22 I think the Commission viewed its role in sort of
23 highlighting these arguments.

24 CHAIRMAN LOCKYER: I don't want to be argumentative, but
25 just to point out that the Bay Area people have paid twice.
26 They've paid the tolls and the gas tax, and so have those that
27 use the Coronado or the Thomas Bridge. They paid twice.

28 And that was really our contention, is that the other

1 people want a bigger piece of the pie, but they're only paying
2 once in the areas that have been most -- San Fernando Valley and
3 some other areas that have been most aggressive about
4 redistributing the Bay Area toll monies.

5 DR. BERGLUND: Yes, I understand.

6 CHAIRMAN LOCKYER: Now, I understand if someone in
7 Southern Cal. wants to say, "Well, we have kind of a 40-60
8 split," and since these monies come off of the top, they avoid
9 any split of some sort that would be appropriate.

10 DR. BERGLUND: That would be the argument on the other
11 side.

12 And I think what it all comes down to is the Commission
13 would certainly like to see the issue resolved because it's a
14 serious budgetary issue. We would like to see that issue
15 resolved so we can get along with the retrofitting thing.

16 The other -- you know, I had a couple others areas.

17 SENATOR AYALA: I listened very carefully to this
18 discussion between you and the Chairman, the split of north and
19 south.

20 CHAIRMAN LOCKYER: We're not changing it. It's in
21 statute.

22 DR. BERGLUND: I have a toll bridge in my county, but I
23 understand that I serve the state also. I'm not just a Southern
24 California Commissioner.

25 CHAIRMAN LOCKYER: I understand you've suggested that
26 whatever the opinion at CTC, that's not a final determinant; that
27 this requires action by the Governor and the Legislature to reach
28 any particular resolve.

1 DR. BERGLUND: I think that the CTC acknowledges that it's
2 an obvious budgetary issue, and it's going to have a serious
3 impact -- I won't say serious; it will probably be, you know,
4 serious, because there's a lot of bridges to be retrofitted --
5 that it will have an impact on the State Highway Account fund.

6 So, that's why we would -- we are real interested in
7 knowing, I think, how much money we are going to have to go
8 forward with the STIP projects. Otherwise, we're going to be
9 delaying them.

10 I'm not sure how much --

11 CHAIRMAN LOCKYER: Let me ask if there are questions of
12 Members? Senator Petris.

13 SENATOR PETRIS: On that prior subject, in response to the
14 question on contracting out.

15 DR. BERGLUND: Yes.

16 SENATOR PETRIS: That's determined by what's in the public
17 interest.

18 But I don't know how you define that?

19 DR. BERGLUND: That's a real problem. I think that's
20 where you would have to look at the particular situation and say,
21 for example, with the retrofit. Caltrans does not have the
22 personnel to do it. In other words, they're at full capacity, or
23 they don't have the specialty people to do it.

24 I know a lot of the environmental work has been needing
25 specialty engineers, and these are oftentimes not on --

26 SENATOR PETRIS: On the payroll of Caltrans, yes.

27 DR. BERGLUND: -- period, and so, some of the
28 environmental work is being delayed. And as you know, that takes

1 a very long time anyway.

2 So, I think these are the kinds of issues that, you know,
3 the flexibility would allow.

4 Now, I don't know. I presume you probably -- someone
5 would maybe argue that it's not in the public interest to get
6 these jobs, you know, completed on a particular schedule, but I
7 guess maybe there would be others that would argue that it's
8 necessary, that the delays are equally costly. So, we would need
9 to get along with the, you know, the work, be it bridge work,
10 environmental work, whatever.

11 Anyone else on that?

12 CHAIRMAN LOCKYER: Any other questions, Senators?

13 If you want to add more --

14 DR. BERGLUND: No, I would just thank you very much for
15 the opportunity to come again.

16 CHAIRMAN LOCKYER: I appreciate that as well. I think
17 that your clarifications have been constructive.

18 I would only add for my colleagues that another
19 consideration is that the work environment in state government is
20 sufficiently fragile that I think it's prudent for us to set a
21 good example and not provoke the visions that could separate us,
22 but keep trying to pull people together.

23 In that spirit, I would move approval of the confirmation,
24 approval of the appointment.

25 Any other comments? Call the roll.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Lewis.

1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
5 Lockyer.

6
7 CHAIRMAN LOCKYER: Aye.

8 SECRETARY WEBB: Lockyer Aye. Four to zero.

9 DR. BERGLUND: Thank you very much. I promise to do a
10 good job for you.

11 [Thereupon this portion of the
12 Senate Rules Committee hearing
13 was terminated at approximately
14 2:56 P.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of June, 1995.


EVELYN J. MIZAK
Shorthand Reporter

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27 Evelyn J. Mizak
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT HANNA, Member
Industrial Welfare Commission

MARION McDOWELL, Member
State Board of Education

BOB WELLS, Director
Governmental Relations
Association of California School Administrators

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Bob, want to come up. This is Industrial Welfare Commission. It's number 8(1).

Good afternoon. Want to tell us how much you love this work?

MR. HANNA: This is even worse than the last one I had. We all the Marines on the last time, so it was no big problem.

It has been a big fight with the Industrial Welfare Commission as far as getting the minimum wage approved and a few other things.

And I've enjoyed my relationship with the Commission. And we know the powers that be, that we can't get everything we want, but I think over all, I think we got along very well with the full Commission.

I see no problems in the future. I think we've got -- the minimum wage is opened up now for hearings, and it's up to the public now to either accept or reject the proposal we've made. We finally opened it up, and now it's up to the people themselves to either support or reject.

CHAIRMAN LOCKYER: I just want to call to Senator Ayala's attention Guadalcanal and other episodes.

SENATOR AYALA: I noted that.

You got an honorable discharge from the Marine Corps? I know you now. Tell me the truth.

MR. HANNA: Twice, Senator, twice. In World War II and Korea, two honorable discharges.

SENATOR AYALA: What about World War I?

1 MR. HANNA: It's awful close; it's awful close.

2 SENATOR AYALA: Career Marine over here.

3 CHAIRMAN LOCKYER: Questions from Members? Of course,
4 this is a reappointment. You've been doing these difficult
5 tasks.

6 MR. HANNA: I'm just shocked that Senator Beverly's not
7 here today because he's been my biggest supporter, and Craven;
8 both good Republicans.

9 CHAIRMAN LOCKYER: Yes.

10 MR. HANNA: Both good Marines and are very proud of that.

11 CHAIRMAN LOCKYER: Both of them are ill.

12 MR. HANNA: I didn't know that. I just heard that today.
13 I'm sorry about that.

14 SENATOR PETRIS: Otherwise, they'd be here carrying the
15 flag.

16 Minimum wage, how do you feel about the minimum wage law?
17 Should we have it or not?

18 MR. HANNA: Well, if you heard Jack Henning's articles in
19 many, many -- I proposed minimum wage in almost every meeting, to
20 open minimum wage.

21 And I still feel -- and I have been -- I'm the only one on
22 the Commission that has been -- has worked for minimum wage. For
23 many years I worked for minimum wage.

24 And the people that appear in front of our committee, I
25 think they really need it, especially in the San Francisco area,
26 Senator. The garment workers and such that have -- it doesn't
27 mean much to a lot of people, but \$10, a quarter an hour, means
28 \$10 a month.

1 And if I recall, BART raised their fees to \$10 a month.
2 And then people that appear in our committee said, "Hey, we have
3 to walk to work now because we cannot afford that \$10 a month
4 difference."

5 Yes, I do. I'm very concerned about that. I'm very
6 concerned about the poverty level. I really am.

7 The people that appear in front of our committee are not
8 programmed, I don't think. I don't think they're programmed, and
9 I think that the need is there, that something's got to be done
10 to get these people above poverty level. This is disgraceful in
11 our country.

12 I'm no young man any more, but I -- and I have been this
13 route a lot of my life, but I just don't want to see those people
14 suffer what I suffered in my youth. I'd like to see a minimum
15 wage --

16 SENATOR PETRIS: The BART train alone is astronomical, you
17 know. I didn't even know the had raised the fares.

18 I had occasion to use BART, you know, this week, and my
19 ticket had expired. So, I went to get a senior citizen ticket,
20 which is 10 percent of the normal fare. I used to get a \$15
21 value ticket for a \$1.50. It was \$16 the other day for the same
22 ticket. It was a real big jump.

23 MR. HANNA: That would hit low-income people also, and the
24 retired especially.

25 SENATOR PETRIS: Yes.

26 CHAIRMAN LOCKYER: Is there a discussion going on now?
27 Has the minimum wage issue come before the IWC?

28 MR. HANNA: The issue is opened up now, yes. We have

1 appointed the review board, and it's well on its way now. And
2 Thank God, because the new member -- the new member has decided,
3 yes, he'd open up again Pandora's Box, if you will. Opened it up
4 and said, "Okay, we'll look at it again."

5 Now, we had this two years ago; it was turned down.

6 CHAIRMAN LOCKYER: Yes.

7 MR. HANNA: I don't mind if it's turned down, but at
8 least, again, just give us a chance. Give us a chance to vote on
9 it.

10 CHAIRMAN LOCKYER: So that's occurring.

11 How about some of the longer workday work orders? Are
12 some of those currently being discussed before the Commission?

13 MR. HANNA: Oh, Senator, as you well know, I've been labor
14 all my life and the whole bit. And you know the situation --

15 CHAIRMAN LOCKYER: I don't mean your personal position.
16 Just to understand what's going on there.

17 MR. HANNA: I don't always -- I've not always gone along
18 with 100 percent labor situations on the thing. I've, you know,
19 I've been on these commissions with the Prison Industries Board,
20 and with the Job Training, and all these apprenticeship programs,
21 and I see a lot of faults with this stuff. And I'd like to do
22 something about it. I'd like to do something about it.

23 In most cases, you're -- there's thumbs on you. You can't
24 do what you really would like to do. You'd like to do what the
25 Democratic Party says, what the Republican Party says, but you
26 can't do that on a commission.

27 And this is the appointments by the Governor or by the
28 State Senate, you know.

1 CHAIRMAN LOCKYER: My question --

2 MR. HANNA: It's very confusing, and it's hard at times to
3 really work for what you really believe in, you know. It really
4 is hard, and God, I have tried so much.

5 You know, I'm 71 years old, you know, and I've tried all
6 my life to kind of get along with both sides -- both sides. And
7 it's very difficult at times.

8 I've got a lot of friends on the Republican side; I've got
9 a lot of friends on the Democratic side. I always have had, and
10 I'm very proud of that.

11 But what you really feel in your heart, what's really in
12 your heart, what you really want to do, it's a brick wall.

13 CHAIRMAN LOCKYER: I understand.

14 Well, when we're right up against the budget deadline, we
15 understand.

16 MR. HANNA: I understand that.

17 CHAIRMAN LOCKYER: Anything else? Senator Ayala.

18 SENATOR AYALA: I have a couple questions for the
19 gentleman. I've been waiting a long time to have him in front of
20 us.

21 Mr. Hanna, what do you think is the function or
22 responsibility of the Industrial Welfare Commission? What are
23 their functions, and what is your mission in that within that
24 organization?

25 MR. HANNA: I'm surprised you asked a question like that,
26 because I come from labor, and I think you know my functions in
27 that.

28 I deviate sometimes from labor's positions, but I think

1 that labor's positions, as far as most of those issues, are
2 pretty well out in front, out in front.

3 SENATOR AYALA: What does the mission do? What is your
4 interpretation?

5 MR. HANNA: Again, I think preserving the eight-hour day,
6 if you will.

7 SENATOR AYALA: That is the mission of the Commission?

8 MR. HANNA: Yes, it is; yes, it is.

9 Preserving working conditions, the minimum wage. That's
10 the big one.

11 SENATOR AYALA: Isn't OSHA's job to take --

12 MR. HANNA: No, no. OSHA has nothing to do with --

13 SENATOR AYALA: -- working conditions --

14 MR. HANNA: We have nothing to do with OSHA at all.

15 SENATOR AYALA: Who does?

16 MR. HANNA: Our Commission has nothing to do with OSHA at
17 all.

18 SENATOR AYALA: What is the function?

19 MR. HANNA: To set working hours and conditions and wages
20 at working hours and conditions.

21 CHAIRMAN LOCKYER: Not safety, but the other conditions.

22 SENATOR AYALA: You support the minimum wage philosophy,
23 yet in 1994, you voted against reviewing it. Can you explain
24 that?

25 MR. HANNA: I did what?

26 SENATOR AYALA: I says that in March of '94, you voted
27 against a new view of the minimum wage level.

28 MR. HANNA: I did?

1 SENATOR AYALA: That's what this says, you did.

2 MR. HANNA: I don't think so, Senator.

3 CHAIRMAN LOCKYER: It must be a clerical error.

4 MR. HANNA: No, no, no, no, no. Come on.

5 SENATOR AYALA: In March of '94, not to begin a new review
6 of the minimum wage level.

7 I would think that you would be willing to do that at any
8 and all times, to review the minimum wage level.

9 MR. HANNA: Well, I've made many votes on that Commission,
10 you know. And maybe for a particular point -- I don't recall
11 this, what you're bringing to the front, but I don't recall I've
12 ever opposed a situation.

13 But maybe I did some politicking for a vote, for a vote.
14 We're a minority. We've always been a minority. And maybe
15 because something might be happening in the future, I have maybe
16 supported something or the other to get the support later on.

17 I don't recall --

18 SENATOR AYALA: I was surprised when I read this, because
19 I know you support the review of that minimum wage level.

20 CHAIRMAN LOCKYER: Senator, I think this is a staff error.

21 MR. HANNA: Almost has to be.

22 CHAIRMAN LOCKYER: Mr. Hanna's been pretty consistent for
23 about 60 years.

24 MR. HANNA: How long?

25 CHAIRMAN LOCKYER: Sixty.

26 MR. HANNA: Close. That's close.

27 SENATOR AYALA: Okay, strike that question then.

28 Disregard it. I was just asking because the report said you had

1 done that. So, I was a little confused that you, who I'm sure
2 always support, promote, reviewing the minimum wage level would
3 be opposing reviewing it.

4 MR. HANNA: I'm surprised you asked the question, Senator.

5 SENATOR AYALA: Why?

6 MR. HANNA: Knowing me all these years, I'm surprised you
7 asked that question.

8 SENATOR LEWIS: Move confirmation.

9 CHAIRMAN LOCKYER: I don't know; it's two and two right
10 now. I'm with him.

11 [Laughter.]

12 MR. HANNA: You know, Senator, at 71 years old, who gives
13 a damn?

14 CHAIRMAN LOCKYER: I know.

15 All right, we've got a motion to confirm. Call the roll.

16 SECRETARY WEBB: Senator Ayala.

17 SENATOR AYALA: Aye.

18 SECRETARY WEBB: Ayala Aye. Senator Lewis.

19 SENATOR LEWIS: Aye.

20 SECRETARY WEBB: Lewis Aye. Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
23 Lockyer.

24 CHAIRMAN LOCKYER: Aye.

25 SECRETARY WEBB: Lockyer Aye. Four to zero.

26 CHAIRMAN LOCKYER: I think you can tell we are friends,
27 and we appreciate --

28 MR. HANNA: I got better last time because Beverly and

1 Craven were here, both Marines.

2 CHAIRMAN LOCKYER: Well, the Marines, we're hanging on to
3 the ones we've got.

4 MR. HANNA: The only one you've got left, and he asked the
5 difficult questions.

6 CHAIRMAN LOCKYER: Keep up the good work.

7 MR. HANNA: Thank you very much.

8 CHAIRMAN LOCKYER: We're proud of you.

9 MR. HANNA: Thank you very kindly.

10 CHAIRMAN LOCKYER: Ms. McDowell is next for reappointment
11 to the State Board of Education. It's Item 8(2) in your file.

12 Good afternoon.

13 MS. McDOWELL: Hello there.

14 CHAIRMAN LOCKYER: How are you doing?

15 MS. McDOWELL: Fine, thank you.

16 CHAIRMAN LOCKYER: I think you have a prepared statement
17 to begin with, and we encourage that.

18 MS. McDOWELL: Well, I thought you might want to hear what
19 I think I've accomplished during the years that I've been on the
20 State Board.

21 CHAIRMAN LOCKYER: Yes.

22 MS. McDOWELL: And I think that I've demonstrated that I'm
23 knowledgeable about teaching and learning, about school
24 governance and management, and school change and improvement.

25 I believe that I've also demonstrated that I'm a consensus
26 builder. When we had an acting Superintendent of Public
27 Instruction, I was asked by my fellow Board Members to work with
28 him and with the Board President at that time to establish a

1 working relationship consistent with the Supreme Court's decision
2 about our relationship.

3 And then, when the newly elected State Superintendent took
4 office, I was able to quickly establish a working relationship
5 which expedited, then, the appointment of the top deputies in the
6 Department.

7 I also believe that I have demonstrated that I've been
8 able to provide the leadership necessary to re-establish the
9 State Board as a responsible policy making body for the
10 Department as well as California's schools. And there was a time
11 when the State Board was not viewed as a responsible body.

12 And then finally, I think I have demonstrated over the
13 years that I am open-minded, fair, and willing to listen to
14 differing points of view.

15 I think that sums up the years I've served on the State
16 Board.

17 CHAIRMAN LOCKYER: Those are good results and qualities.

18 I know that at least Mr. Wells is intending to comment.
19 If there's anyone who wishes to, it would be appropriate, and
20 then we'll ask questions.

21 MR. WELLS: Thank you. I'm Bob Wells with the School
22 Administrators.

23 We're in strong support of the confirmation. We're proud
24 to have Ms. McDowell as a member of our Association. And unlike
25 a lot of the confirmations that you hear here in the Rules
26 Committee, where you have a nominee that you don't know a lot
27 about and you have to get to know each other, with Ms. McDowell
28 we have the case where we have worked together for years and seen

1 her experience on the State Board of Education, and it's all been
2 positive.

3 She has been the kind of Board Member that you want to put
4 on a board, who will do her homework, study issues, keep the
5 students of the state in mind, and be a moderating influence.

6 So, we think she's had a terrific history there. She'll
7 serve the state and our children well in the future, and we
8 encourage you to vote aye on the confirmation.

9 CHAIRMAN LOCKYER: Are there questions from Members? Do
10 you have questions or concerns?

11 SENATOR AYALA: I just have a question that deals with the
12 student fees. How do you stand on that issue?

13 MS. MCDOWELL: Well, as the State Board, we're not
14 involved with student fees.

15 But I do know that as our graduates from 12th grade enter
16 college, they are indeed faced with some economic hardships if
17 the fees go up too much.

18 On the other hand, I understand that there is a budget
19 crisis in this state, and if we're going to continue the level of
20 the higher education that we're providing, we may have to
21 increase the fees.

22 I had the experience last year, one of our teachers earned
23 a scholarship to go east to take some college work. And she
24 called me from the East Coast about another matter, but she
25 says, "I just have to tell you, these fees in these other states
26 are astronomical. They are much higher than California."

27 So, while it is a hardship for our students, we're -- we
28 sometimes have to take a hard line simply because of the costs

1 that are facing the state.

2 SENATOR AYALA: Thank you.

3 CHAIRMAN LOCKYER: Thank you, Governor.

4 MS. McDOWELL: I've not even talked to the Governor about
5 that.

6 CHAIRMAN LOCKYER: If our administrative salaries are very
7 high compared to other states, does that mean we should maybe cut
8 those down to make them more equivalent to what they pay for
9 assistant and deputy superintendents in other places?

10 MS. McDOWELL: Probably, commensurate with the cost of
11 living in those other states.

12 CHAIRMAN LOCKYER: We'll factor that in, yes. Good point.
13 How's it doing with the new Board Members and new
14 Superintendent? Can you give us a general summary?

15 MS. McDOWELL: Our relationship is better than anyone
16 would have predicted. That from just early on, we have been able
17 to develop a very positive working relationship.

18 The Department is clearly responsive to the Board's policy
19 making, and we don't have great differences with the State
20 Superintendent. And for that, I'm very pleased, and I think
21 she's pleased also.

22 CHAIRMAN LOCKYER: I know she is.

23 Is there a principal focus of the work now?

24 MS. McDOWELL: I think there are two areas that both the
25 State Superintendent and the State Board are focusing on. One,
26 of course, is the standards and assessments. And then the other
27 one is the foundational skills, particularly in reading and math.
28 And we very early reached that agreement.

1 CHAIRMAN LOCKYER: I think we share your emphasis.

2 SENATOR AYALA: I have one more question, Mr. Chairman.

3 I'd just like to know your position on choice schools and
4 charter schools.

5 MS. McDOWELL: Well, I think there are charter schools
6 that are doing some very fine things. I think it's a little
7 early to give a clear evaluation of how well they're functioning.

8 I think the concept is great, and I think that what has
9 happened is, particularly for those schools who are brand-new
10 schools, those who formed them are discovering it's far harder to
11 have a functioning school up and running than they ever imagined.

12 But I think there are excellent examples of charter
13 schools that will be making a difference in education in
14 California and setting an example, then, for others.

15 Choice, I think that we currently have some choice within
16 the public schools with the recent legislation that requires
17 choice within districts and permits it across district lines.
18 And I think that choice is something that is extremely important
19 to the public.

20 I think that we need to work out details if we're going to
21 spend scarce dollars on nonpublic schools, because there's just
22 not enough money to go around at this point.

23 SENATOR AYALA: As it pertains to parochial schools, there
24 was a bill here a few years ago that would provide public funds
25 for religious schools for the purpose of instructional material,
26 not religious material, as a tax deduction.

27 Would you support that?

28 MS. McDOWELL: I think there's already some sharing of

1 public school instructional materials, and certainly through the
2 federal government currently, Chapter 2 funds are passed through
3 a school district to the parochial schools and other private
4 schools in the area. So, there are some ways that that can work,
5 but in general, I think the two systems are separate.

6 SENATOR AYALA: I agree with you. I think it's too early
7 to judge the schools that are running on their own. And that's
8 why I opposed the expansion of that until we have a little more
9 background and experience to see what we're doing with those
10 things.

11 MS. McDOWELL: One of the problems in public education has
12 always been that we don't pilot enough. We just jump full bore
13 into things without testing them out first.

14 SENATOR AYALA: Thank you.

15 CHAIRMAN LOCKYER: What's the pleasure of the Committee?

16 SENATOR PETRIS: Move.

17 CHAIRMAN LOCKYER: We have a motion by Senator Petris.

18 May we record the four of us as voting aye? That will be
19 the order.

20 [Thereupon the appointment was confirmed

21 by a vote of four to zero.]

22 CHAIRMAN LOCKYER: Thank you.

23 MS. McDOWELL: Thank you very much.

24 CHAIRMAN LOCKYER: We appreciate your constructive work
25 before the Board. I think we've heard that for a number of
26 years, and there are times when they really need peace keepers.

27 MS. McDOWELL: Exactly.

28 CHAIRMAN LOCKYER: You've done it well.

1 MS. McDOWELL: Thank you very much.

2 [Thereupon this portion of the
3 Senate Rules Committee hearing
4 was terminated at approximately
5 2:00 P.M.]

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That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 1995.


EVELYN J. MIZAK
Shorthand Reporter

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16 MONDAY, JULY 3, 1995

17 1:48 P.M.

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25 Reported by

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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY, Vice Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MAUREEN P. HIGGINS, Executive Director
Housing Finance Agency

JOHN D. SMITH, Director
Office of Administrative Law

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Ms. Higgins, do you want to tell us who you are?

MS. HIGGINS: Mr. Chairman and Members, my name is Maureen Higgins. I'm the Executive Director of the California Housing Finance Agency.

By way of background, in 1978 I graduated from McGeorge School of Law and have spent the last 16 years of my professional life in state government. Most of that time -- well, three and a half years of that was as Deputy Attorney General. Most of the rest of that time was in the Governor's Legislative Unit as Deputy, Chief Deputy, and finally as Legislative Secretary to Governor Pete Wilson.

In 1989 and 1990, I served as Director of the Department of Housing and Community Development. During that time, I was appointed by Jack Kemp as a Commissioner on a national commission created to examine the regulatory barriers to affordable housing in the United States.

Until last January, as I said, I served as Pete Wilson's Legislative Secretary when he appointed me to this position.

By way of -- I just wanted to say a few things about CHAFA and what we have been doing at CHAFA since January, just to update you on where we are, and then I'd be happy to answer any questions.

As you know, CHAFA's basically a mortgage bank. And what we do is, we sell tax exempt revenue bonds. We take the capital that is raised through the sale of those bonds, and we are able,

1 because it is tax exempt and we don't have to pay as high a yield
2 to the bond holders, we can make below conventional market rate
3 mortgages to first-time home buyers.

4 We also do multi-family lending.

5 So, basically our three missions are: single family
6 lending to first-time home buyers; multi-family lending to get
7 renters into affordable housing; and single family insurance.

8 CHAFA's bonds are not backed by the general obligation of
9 the State of California or the full faith and credit of the State
10 of California. We are totally self-supporting. We live off the
11 spread between the yield on the bonds and the amount we collect
12 in mortgages.

13 I just want to make three points about what we've been doing
14 to let you know.

15 The first is, in 1992-94, under John Seymour, my
16 predecessor, and a very competent and professional staff at
17 CHAFA, we instituted a business plan for the agency, a five-year
18 business plan, which is basically setting out the goals in
19 production that we would like to achieve and how we are going to
20 get there. I think that's been a very effective tool for the
21 agency.

22 In 1993-94, our business plan goals for five years was
23 \$4.6 billion in production. At the last May, our board approved
24 a business plan for this year that is \$7.1 billion in production.
25 So, you can see, just over a three-year period, we have
26 substantially increased our production goals by over 50 percent.

27 The second thing I wanted to mention was about our largest
28 program, which is our single-family mortgage program. Again,

1 under John Seymour's direction, two years ago, he came in and
2 basically took another look at how we were doing business. Up
3 until that time, we did what was called a forward commitment
4 process, so that we would work with lenders out in the field and
5 say, "All right, what is a reasonable mortgage rate to offer for
6 our product?" We would turn around and sell bonds at a certain
7 rate to be able to offer that rate.

8 That worked. In fact, CHAFA did that for years, and it
9 worked fine until the period of '92 and '93, when conventional
10 mortgage rates dropped substantially. And in fact, they dropped
11 below the rate that CHAFA was offering. And at the same time,
12 the federal authority for us to issue mortgage revenue bonds
13 lapsed so we couldn't go back in and refund our bonds. So, we
14 needed to take another look at how we were delivering our
15 product.

16 So, what he did is called all of the users of the program
17 in and asked them what to do. And basically, what we ended up
18 with is what we call an over-the-counter system, so that instead
19 of this forward commitment process, we are in the market every
20 single day. We've created a loan product that is available to
21 our system of lenders every day of the year at varying interest
22 rates. Our goal is to offer a mortgage about a hundred basis
23 points below the conventional market.

24 Also, the second part of that goal was to cut down on our
25 processing time so that we could turn around our product quickly
26 for our lenders. Our goal was a 90-day process, and we are under
27 that right now.

28 The last point I wanted to make is about our multi-family

1 lending. In the last couple of years, the level of multi-family
2 lending for new or rehabbed affordable rental housing units has
3 been fairly small, \$12-20 million a year. The reason for that
4 was that we didn't have a workable credit enhancement mechanism,
5 and we have been able to find that now.

6 HUD has, through its FHA, developed a pilot program called
7 Risk Share, in which HUD takes half the risk on a project and
8 CHAFA will take the other half. It is backed by an appropriation
9 at the federal level, which acts as a loan loss reserve, and they
10 allocate units throughout the country that are backed by this
11 program.

12 The total units nationwide is 30,000, and California so
13 far has qualified for almost 5,000 of those units.

14 With this credit enhancement, we are able to lower our
15 cost of funds and make loans to mostly nonprofit sponsors who can
16 now pencil out deals and make these deals work.

17 As a result of that, our lending has increased 900
18 percent. In our pipeline now, we have \$240 million worth of
19 projects. Compare that to doing about \$20-25 million total just
20 a year ago.

21 CHAIRMAN LOCKYER: These are multi-family?

22 MS. HIGGINS: Multi-family, yes.

23 Now, the last point I want to make --

24 CHAIRMAN LOCKYER: Can you say one more time what made it
25 work?

26 MS. HIGGINS: It's the credit enhancement mechanism, the
27 pilot program created by HUD, which we call Risk Share, in which
28 we share the risk with them.

1 CHAIRMAN LOCKYER: So, it's because of the existence of
2 that --

3 MS. HIGGINS: Right.

4 CHAIRMAN LOCKYER: -- that you could make --

5 MS. HIGGINS: That was the missing piece in trying to make
6 these deals work. But because that credit enhancement is
7 available, it increases the confidence of bond holders and lowers
8 the cost of funds.

9 The last point I wanted to make on our multi-family
10 lending is that we are required by law to, on the units that we
11 lend, to serve 20 percent of the units to very low income, which
12 is 50 percent or below of median income.

13 Our goal -- CHAFA set an agency goal of 25 percent, and we
14 exceeded that last year. It was 27 percent at or below 50
15 percent of median, and 62 percent total at or below 80 percent of
16 median. So, we're reaching farther down to help those who are in
17 need.

18 And with that, that's just a quick update on where we are,
19 and I'd be happy to answer any of your questions.

20 SENATOR LEWIS: With regard to single family residence,
21 what are the eligibility requirements for a loan from CHAFA?

22 MS. HIGGINS: There are two, both income eligibility and
23 price eligibility on the home.

24 According to federal tax law, for a family of one, the
25 income eligibility limits are 100 percent of median. As you go
26 up into family size up to three more, it can be 115 percent.

27 Then, as far as the price of the home, it's the -- it's 90
28 percent of the average home price in the county.

1 Now, I can translate those to you for a specific area.

2 SENATOR LEWIS: No, not necessary.

3 What is the size of the loans that you're making now? Is
4 it 90 percent, 95?

5 MS. HIGGINS: Actually, our insurance arm will loan -- has
6 an insurance product available to 97 percent. So, we have a
7 product -- we can lend 95 percent or 97 percent.

8 SENATOR LEWIS: And we've been experiencing in certain
9 parts of the state a declining real estate market.

10 MS. HIGGINS: Yes.

11 SENATOR LEWIS: First of all, like in the last 12 months,
12 how many single family residences have you provided, just
13 approximately?

14 MS. HIGGINS: Well, last year we did \$500 million worth of
15 loans in single family. I can tell you how many that is.

16 SENATOR LEWIS: Have you experienced a problem --

17 MS. HIGGINS: It's 4800 loans.

18 SENATOR LEWIS: Have you experienced any kind of a problem
19 yet with people deeding back or walking away?

20 MS. HIGGINS: No, no. We do carry an inventory of REOs.
21 We do get them back sometimes. But our rate is much below the
22 conventional rate. In fact, it is -- our delinquency rates are 8
23 percent, and the industry rate's almost 9-1/2 percent.

24 CHAIRMAN LOCKYER: In single family?

25 MS. HIGGINS: Uh-huh.

26 SENATOR LEWIS: I'm just kind of curious why that might
27 be. If you're loaning up to 97 percent, and the house declines
28 in value by 10 or 15 percent --

1 MS. HIGGINS: The reason, Senator, is because CALIF, our
2 insurance arm, is very careful about that. They look at two
3 things. One, they're very careful about using lenders that have
4 a good history, so they look at how they perform, number one.

5 And number two, they have a very active program in working
6 with the borrowers. So, early on, they see if there's going to
7 be a problem, and they sit down and do counseling with them, and
8 try to figure out if there's a way to salvage the loan.

9 And this has worked very well for CALIF. Their loan loss
10 ratio is way under industry average.

11 SENATOR LEWIS: So, you don't have any concerns that this
12 in any way might be a walking time bomb?

13 MS. HIGGINS: Well, I think we always have to be careful
14 about it and watch it. But I think with the controls that we
15 have in place that we are showing that we're doing much better
16 than average.

17 But it's something that we should never take for granted
18 and always keep our eye on.

19 CHAIRMAN LOCKYER: Senator Ayala.

20 SENATOR AYALA: State law requires local governments to
21 have a general plan. And in that general plan, have a housing
22 element that addresses the low-income housing.

23 Only about 50 percent of all the cities and counties
24 comply because there's no enforcement authority, I guess.

25 Is that responsibility at your Department?

26 MS. HIGGINS: No, actually that's the responsibility of
27 the Department of Housing and Community Development.

28 SENATOR AYALA: You're not to blame for that?

1 MS. HIGGINS: No. I used to be, but not any more.

2 CHAIRMAN LOCKYER: Well, I think that's one of the
3 questions we might pose, whether there've been active
4 discussions, or even a good reason to combine the different
5 housing, like HCD and the Tax Allocation Committee.

6 What do you think?

7 MS. HIGGINS: Well, actually, Senator, you're not alone in
8 thinking that. In last year's budget process, the Senate asked
9 for a task force to look at that issue. And BT&H spearheaded the
10 task force. It was made up of the parties you mentioned, HCD,
11 us, and the Tax Credit Allocation Committee, as well as other
12 interested parties, which included local governments, nonprofit
13 users, et cetera, et cetera.

14 They looked at it carefully, and what they concluded was
15 that there were areas where there should be much better
16 coordination, and we might be able to streamline processes. But
17 they did not recommend that we actually consolidate the three
18 agencies.

19 They recommended that we streamline our documents; that we
20 streamline the monitoring of our programs, and we are in the
21 process now of working with the other agencies to make
22 recommendations on how we can consolidate our monitoring, and
23 also consolidate our planning process. And in fact, recommended
24 that the Department of Housing, when they do the statewide
25 housing plan, create a housing advisory group that includes the
26 two other state agencies and other involved that I mentioned so
27 that we can have better coordination in the planning process.

28 CHAIRMAN LOCKYER: Senator Petris, anything?

1 SENATOR PETRIS: I was wondering how long your waiting
2 list is, if you have one, for the lower income?

3 MS. HIGGINS: Actually, we don't maintain waiting lists.
4 That's generally the function of public housing authorities that
5 are waiting for Section 8 vouchers.

6 So, we do it by -- on a demand basis. We have a program
7 available for multi-family lending, and nonprofit and for-profit
8 sponsors out there know that it's available, and they come to us
9 as --

10 SENATOR PETRIS: They have a waiting list?

11 MS. HIGGINS: -- we're a lender.

12 SENATOR PETRIS: So the waiting list for you is the
13 agency, the local agency?

14 MS. HIGGINS: Yes. We use those as determiners as part of
15 the market survey when we determine whether or not to lend, what
16 the need is in the area, and whether or not this project's going
17 to cash flow.

18 One of the factors we look at is waiting lists in an area.

19 SENATOR PETRIS: Thanks.

20 CHAIRMAN LOCKYER: I'll note that the file contains no
21 opposition to your confirmation.

22 SENATOR AYALA: Move approval.

23 CHAIRMAN LOCKYER: A motion by Senator Ayala for approval.
24 Why don't you call the roll, please.

25 SECRETARY WEBB: Senator Ayala.

26 SENATOR AYALA: Aye.

27 SECRETARY WEBB: Ayala Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 SECRETARY WEBB: Lewis Aye. Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
4 Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer Aye. Four to zero.

7 MS. HIGGINS: Thank you, Senators.

8 CHAIRMAN LOCKYER: Good luck. Keep up the good work. It
9 sounds like there's some progress being made.

10 MS. HIGGINS: Thank you.

11 CHAIRMAN LOCKYER: Mr. Smith.

12 MR. SMITH: My name's John Smith. I'm the Director of the
13 Office of Administrative Law.

14 Mr. Chairman, Members of the Committee, I appreciate being
15 -- having again the opportunity to appear before you.

16 By way of some background, in 1986, I was appointed and
17 confirmed as Deputy Director for the Office of Administrative
18 Law. In 1990, I was appointed Director to complete the term of
19 the Deukmejian administration, and was acting Director until May
20 of 1991, at which time I was appointed and confirmed again as
21 Deputy. In August of '93, I was appointed and confirmed as
22 Director, and I'm here today for the same purpose for the second
23 term of this administration.

24 The primary purpose of our Office is to review the
25 regulations, conduct a legal review of the regulations that are
26 adopted by approximately 120 state agencies. We review annually
27 roughly 16,000 regulations.

28 Does anyone have any questions? I'd be happy to answer

1 them.

2 CHAIRMAN LOCKYER: Are there any fewer of them because of
3 you? Do we have any empirical basis for knowing whether there
4 are fewer lawsuits, fewer regulations, clearer regulations,
5 anything that one could argue as a reason to keep this agency
6 around?

7 MR. SMITH: I think you'd have -- Senator, I think you'd
8 have to look at the very long-term, going back before OAL.

9 Since we've been created, we have numbers and stats on --
10 well, for instance, we disapprove roughly 2,000 regulations every
11 year. A number of them never come back because they have not
12 followed the legislative intent of the statute they were supposed
13 to be implementing.

14 CHAIRMAN LOCKYER: But the disapproval rate has been
15 dropping.

16 MR. SMITH: That's correct. And I believe the reason for
17 that is, we recognized sometime ago there was no -- the APA
18 process is a very complicated one. There's no classification in
19 state service to deal with that. So, we've been -- we've trained
20 roughly 200-250 people a year through the State Training Center.

21 So, I believe we're seeing the disapproval rate is going
22 down, and that's a very positive thing.

23 CHAIRMAN LOCKYER: They're better at it?

24 MR. SMITH: Correct.

25 Unfortunately, we still deal with a lot of regulations
26 which are inconsistent with the laws, sometimes intentionally.
27 They want to follow their own policy, and if it wasn't for OAL,
28 the people would be inflicted with these illegal regulations.

1 But I'd be happy to provide you with some numbers for the
2 last, say, ten years.

3 CHAIRMAN LOCKYER: That would show what?

4 MR. SMITH: That would show the number of regulations that
5 have been disapproved.

6 CHAIRMAN LOCKYER: I think we've seen that.

7 MR. SMITH: Perhaps. It's very difficult to say that if
8 we didn't exist, there would be more lawsuits. I think that's a
9 fair conclusion, but you'd have to go way back and look and see
10 how many lawsuits there were.

11 I think you'd also -- you can glean some information from
12 the people, the associations, the businesses, that support us,
13 and they are -- they would attest to the fact that if we didn't
14 exist, and didn't disapprove some of these regulations, they
15 would be in court.

16 CHAIRMAN LOCKYER: Is there a way to quantify pre and post
17 OAL litigation? The legal environment changes, but still, just
18 to see if there were a lot that were filed before OAL?

19 MR. SMITH: I don't know if I could do that, frankly. But
20 I think you have to consider that that was the only alternative
21 back then.

22 CHAIRMAN LOCKYER: Right.

23 MR. SMITH: They didn't have any other choice.

24 Now there is a choice, and if we weren't here to dispose
25 of these regulations, they would have no alternative. They would
26 be in court, clearly.

27 CHAIRMAN LOCKYER: What's the toughest part of your job?

28 MR. SMITH: There really -- there's some challenging

1 things to it. I suppose the most challenging is that we don't
2 have any control over our workload. We can get two regulations
3 in a day or twenty. We have a very small staff. When there's
4 illnesses or vacations, it's difficult getting the job done,
5 frankly, but we always do.

6 CHAIRMAN LOCKYER: One of the guidelines, as I recall the
7 descriptions of the current statutory scheme, is for you to
8 assess the necessity for the regulation.

9 MR. SMITH: Correct.

10 CHAIRMAN LOCKYER: The question's been posed as to whether
11 that's too subjective and value laden, or that perhaps you don't
12 have the expertise to understand each program and what might be
13 necessary to effectuate each one.

14 Any truth to that worry?

15 MR. SMITH: No. We can't and don't -- because we are
16 generalists, we don't question the policy. All we expect that
17 the record reflect, and this is really not for our benefit but
18 for the people who are commenting on these regulations, that
19 there's some reasoning as to why they need this particular
20 regulation.

21 CHAIRMAN LOCKYER: So necessity just means purpose.

22 MR. SMITH: Correct. Why is the fee going to be \$50? Why
23 isn't it 25? And we have to give the public some explanation of
24 what's going on. That's the purpose of it.

25 CHAIRMAN LOCKYER: Other questions?

26 Did you want to add anything at all?

27 What's the pleasure of the Committee?

28 SENATOR LEWIS: Move confirmation.

1 CHAIRMAN LOCKYER: We have a motion to confirm. Call the
2 roll.

3 SECRETARY WEBB: Senator Ayala.

4 SENATOR AYALA: Aye.

5 SECRETARY WEBB: Ayala Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator
10 Lockyer.

11 CHAIRMAN LOCKYER: Aye.

12 SECRETARY WEBB: Lockyer Aye. Four to zero.

13 CHAIRMAN LOCKYER: Good luck.

14 MR. SMITH: Thank you.

15
16 [Thereupon this portion of the
17 Senate Rules Committee hearing
18 was terminated at approximately
19 2:24 P.M.]

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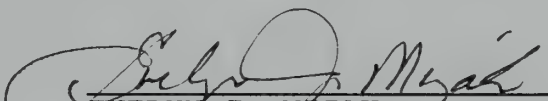
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of July, 1995.


EVELYN J. MIZAK
Shorthand Reporter

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INGRID AZVEDO, Member
California Unemployment Insurance Appeals Board

STEFAN L. MANOLAKAS, Member
California Horse Racing Board

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Item number three, Ingrid Azvedo as a member of the Unemployment Insurance Appeals Board. Good afternoon.

MS. AZVEDO: Good afternoon.

CHAIRMAN LOCKYER: Do you want to start with any kind of statement?

MS. AZVEDO: I have a little opening statement.

CHAIRMAN LOCKYER: All right.

MS. AZVEDO: Mr. Chairman and Senators, it's a pleasure that I come before you this afternoon to update you on the California Unemployment Insurance Appeals Board, which hears and decides employment appeals in the areas mostly of unemployment and disability insurance.

In 1994, CUIAB decided almost 250,000 appeals. Of that, 26,000 were decided by Board members. As one member of a Board panel, I decided a minimum of 8,000 cases last year. Everyday I read transcripts and documentations of at least 25 appeals, which means on a daily basis I directly affect the livelihoods of 25 or more employers as well as 25 ex-employees.

I'm acutely aware, unfortunately, that one of the parties in the appeal is going to lose, which means their livelihood will be severely affected.

I take my job as a member of this Board as a very serious responsibility. I'm a full-time employee of the State of California, so in addition to our biweekly Board meetings, I am in the office on a daily basis, and I'm involved with the daily

1 management of 630 employees and workload.

2 I have initiated a total quality management philosophy to
3 CUIAB to assist in making work more sensible for employees and
4 the appeals process more understandable to the claimants.

5 Board members come and go, but permanent staff will be
6 there for many years to come, and it is my desire to make their
7 work as efficient and enjoyable as possible.

8 I'm looking forward to serving four more years on this
9 Board, and I thank you for your consideration.

10 CHAIRMAN LOCKYER: Let me ask if there's anyone present
11 who wishes to make any comment?

12 Questions from Members?

13 Let me start with the backlog --

14 MS. AZVEDO: Yes.

15 CHAIRMAN LOCKYER: -- of cases. As I understand the
16 history, there was an agreement to try to dispose of the backlog.

17 MS. AZVEDO: Yes.

18 CHAIRMAN LOCKYER: That almost a doubling of the
19 administrative law judges occurred in order to accomplish that.

20 MS. AZVEDO: That's right. That was in 1992.

21 CHAIRMAN LOCKYER: Now, the ALJs have been cut back by
22 some substantial amount?

23 MS. AZVEDO: We cut back on the time -- on the term limit
24 ALJs because they were hired with the understanding that they
25 would only be there for two years. And we also cut back on the
26 hours of the permanent intermittent ALJs and support staff,
27 because it affects both sides. And we have been able to bring
28 our caseload into order, and we are now totally up to date.

1 The lawsuit against us has been dropped, and we have been
2 given the red carpet treatment as the number one large state in
3 the nation to have brought their workload under control.

4 CHAIRMAN LOCKYER: Whose carpet?

5 MS. AZVEDO: Department of Labor.

6 CHAIRMAN LOCKYER: You mean our --

7 MS. AZVEDO: No, the national, federal. You see, we are
8 greatly federally funded.

9 CHAIRMAN LOCKYER: Right.

10 MS. AZVEDO: So, they keep a very close watch on what
11 we're doing.

12 CHAIRMAN LOCKYER: What are your numbers of ALJs now? If
13 it went in '92 from 135 to 232 --

14 MS. AZVEDO: Yes, and it went up to 193 at the time.

15 CHAIRMAN LOCKYER: What is it back to now?

16 MS. AZVEDO: I would say we're about 170.

17 CHAIRMAN LOCKYER: So, you're not feeling like there's a
18 current problem with the backlog?

19 MS. AZVEDO: No, I do not because we have -- especially
20 because of the total quality management philosophy, and we have
21 worked on this for almost two years. And when we found out that
22 we had such a tremendous backlog, we concentrated on it instantly
23 and came up with ways of correcting what we were doing.

24 And we've actually managed to have the ALJs take on extra
25 work, and we have worked harder and become more efficient on less
26 resources.

27 CHAIRMAN LOCKYER: One of the questions, I guess, that
28 short of ran with the backlog worry was the thought that if it

1 took a while for an employee to get approval of a claim because
2 they had to appeal, and with the backlog they waited in line for
3 a long time, that they should be entitled to --

4 MS. AZVEDO: Speedy hearings.

5 CHAIRMAN LOCKYER: Well, that, but also the interest while
6 they waited.

7 MS. AZVEDO: Yes. There is a precedent on that problem
8 right now which has not been decided because the ALJ who heard a
9 particular case on that wanted to pay interest, but at this time
10 we have not been approved to pay interest because it's not the
11 ALJ's authority to do that.

12 CHAIRMAN LOCKYER: Well, I understand that there was a
13 court in San Francisco that approved the ALJ's finding; that is,
14 that allowed or ordered interest --

15 MS. AZVEDO: Right.

16 CHAIRMAN LOCKYER: -- to be paid. And apparently,
17 someone, either EDD or Unemployment Insurance Appeals, decided to
18 appeal that case.

19 MS. AZVEDO: Right.

20 CHAIRMAN LOCKYER: Rather than live with the court's
21 finding.

22 MS. AZVEDO: Yes.

23 CHAIRMAN LOCKYER: Were you consulted about that?

24 MS. AZVEDO: We were consulted about it, and we know that
25 the case is still pending as far as I know.

26 CHAIRMAN LOCKYER: It's before the Court of Appeals.

27 MS. AZVEDO: It's before the court and it's not final.

28 CHAIRMAN LOCKYER: So, they asked the Board to approve an

1 appeal? Is that what happened?

2 MS. AZVEDO: That's what happened.

3 CHAIRMAN LOCKYER: And you voted to appeal?

4 MS. AZVEDO: Yes.

5 CHAIRMAN LOCKYER: Just for the record, let me note
6 disagreement.

7 MS. AZVEDO: Right.

8 CHAIRMAN LOCKYER: I guess another problem that's been
9 mentioned to us is that the Employment Development Department is
10 trying to change the review process for disability claims, so
11 that at the Department level, even though disability has begun to
12 be paid, they can reverse that and cut that off. That is, unlike
13 the current system, where they'd have to go before the Appeals
14 Board to cut it off.

15 Does this sound familiar?

16 MS. AZVEDO: No, sir, that does not sound familiar.

17 CHAIRMAN LOCKYER: So, they haven't come before you yet.

18 MS. AZVEDO: They have not come before us on that issue.

19 CHAIRMAN LOCKYER: I'm informed that in January of this
20 year, EDD circulated new regulations that would establish that
21 process so that they could cut them off at the Department level
22 and not go before your Board.

23 I guess maybe they just do things and don't tell you.

24 MS. AZVEDO: Well, EDD is going through a tremendous
25 amount of changes. They are going through all phone hearings,
26 and there are some real problems that we will have to consider in
27 the future. So, this might be one of those.

28 CHAIRMAN LOCKYER: What's the hardest part of your job?

1 MS. AZVEDO: Saying no to a claimant when you know that
2 you would like to pay him but you can't, and sometimes we do.

3 CHAIRMAN LOCKYER: Does a case come to mind where there
4 was a situation of, what, I guess the law required you to say no
5 by the way you read the law, but it seemed hard to do?

6 MS. AZVEDO: Basically I have at least one of those every
7 day.

8 CHAIRMAN LOCKYER: Do you?

9 MS. AZVEDO: Yes.

10 CHAIRMAN LOCKYER: What's the law that 's --

11 MS. AZVEDO: Well, the law holds you to a certain way of
12 finding on a case because we are bound by codes.

13 CHAIRMAN LOCKYER: Sure.

14 MS. AZVEDO: And sometimes we get the cases -- you see,
15 the way it works, the appeals process comes from the field, and
16 then they appeal to the Board directly, and then we have Board
17 authors that will write the decision as they know we should
18 decide.

19 I have Board members that I am in agreement with on
20 certain issues, where sometimes I feel I don't really want to
21 decide that way, but there is a little gray area. And then we
22 have learned if we go back to a Board author and say, well this
23 is a particular case where we feel really strongly that there is
24 something not quite right, or this would create such hardship,
25 and is there any possible way that they can rewrite the case.
26 And then there is always a way. I have never yet been told by a
27 Board author that no, we can't, because we don't do it all the
28 time, but sometimes we just have to because you know in your gut

1 that's what you have to do.

2 CHAIRMAN LOCKYER: But is there some particular law that
3 actually is the one you bump up against?

4 MS. AZVEDO: Oh, yes. There are laws that we bump up
5 against.

6 CHAIRMAN LOCKYER: Is there any one that comes to mind?

7 MS. AZVEDO: What the employer will call good cause might
8 be a constructive quit on the employee's side. And then, what
9 basically happens, they will both come to the Board and appeal
10 and state their opinions.

11 And I wish I could think of one that is really terrible.

12 CHAIRMAN LOCKYER: So that's the law you're referring to?

13 MS. AZVEDO: That's the law I'm referring to, right.

14 CHAIRMAN LOCKYER: So, good cause or quit.

15 MS. AZVEDO: Or quit, yes.

16 CHAIRMAN LOCKYER: Others? Senator Ayala.

17 SENATOR AYALA: Is there currently a process to appeal
18 where an employee feels an employer has or is treating that
19 employee unfairly and goes on to prove their case? Are they
20 awarded benefits in that case, unemployment benefits?

21 MS. AZVEDO: Well, that's basically the kind of case that
22 we're talking about.

23 It depends on the evidence that is submitted to us.

24 SENATOR AYALA: I'm talking in terms of --

25 MS. AZVEDO: If the employee can prove that he has been
26 unjustly treated, or that he was made promises to that were not
27 kept, then there is a very good possibility that we would find
28 for the employee.

1 SENATOR AYALA: Under the current law, are they covered if
2 the employee can justify the fact that the employer was unfairly
3 treating that individual?

4 MS. AZVEDO: Yes, then it will found --

5 SENATOR AYALA: Is there a process where they can get
6 benefits out of that?

7 MS. AZVEDO: Yes, yes.

8 SENATOR AYALA: Current law provides for that?

9 MS. AZVEDO: That provides for that, yes.

10 CHAIRMAN LOCKYER: Senator Petris.

11 SENATOR PETRIS: You referred to a telephone meeting?

12 MS. AZVEDO: Yes, sir.

13 SENATOR PETRIS: What does that mean?

14 MS. AZVEDO: Well, it means that EDD will eventually do
15 all their hearings on claims by telephone. And we are bothered
16 by the fact that maybe eventually that will drive our appeals
17 process up because we will not be doing our hearings by
18 telephone.

19 SENATOR PETRIS: How do they propose to do it by phone?
20 Who's talking to whom?

21 MS. AZVEDO: Well, EDD has made that decision to talk to
22 the employer and the employee by telephone. You would just have
23 the claimant go to EDD and apply for unemployment. And in the
24 old days, they would go in and talk to someone.

25 And as we're looking at the future, I guess in order to
26 save cost and close down offices, and there also is a security
27 factor involved, they will now do their telephone hearings
28 instead of person hearings.

1 SENATOR PETRIS: Is that allowed by the statute?

2 MS. AZVEDO: I can't speak for EDD, Senator Petris. I'm
3 sure that they must have looked at every lawful and unlawful way
4 of doing that.

5 We feel a little bit bothered by it, because we do not
6 feel that a claimant will get good cause.

7 SENATOR PETRIS: I would think the claimant's entitled to
8 a hearing.

9 MS. AZVEDO: Yes. Well, they get the hearing, but they
10 get it by phone.

11 And my problem with that --

12 SENATOR PETRIS: That's not a hearing.

13 MS. AZVEDO: -- is, how do we know who's on the other end
14 of the phone, you see.

15 SENATOR PETRIS: Yes.

16 MS. AZVEDO: So, I fought for, in our Board meetings, and
17 I think the majority of the Board still feels that way, that we
18 do not wish to go to phone hearing.

19 SENATOR PETRIS: Are they doing it now, or is that
20 sometime in the future?

21 MS. AZVEDO: In some areas they're doing it now, but I
22 think in the future they will all go to that. And claimants will
23 not feel that they're getting due process, and then they will
24 appeal a lot more than what they are doing now because, if you
25 talk to someone by a phone, and you feel that you didn't get due
26 process, you're going to take the take the next step and appeal.

27 SENATOR PETRIS: It's strange.

28 CHAIRMAN LOCKYER: Do I remember you being a candidate for

1 the Legislature once?

2 MS. AZVEDO: You have a very good memory, because to me
3 that seems like 200 years ago.

4 CHAIRMAN LOCKYER: How many years ago was it?

5 MS. AZVEDO: Yes, I ran in 1982.

6 CHAIRMAN LOCKYER: That was for the Assembly?

7 MS. AZVEDO: Yes.

8 CHAIRMAN LOCKYER: Garamendi?

9 MS. AZVEDO: Isenberg. It was --

10 CHAIRMAN LOCKYER: There are days we wish you'd been
11 successful.

12 (Laughter.

13 MS. AZVEDO: Thank you.

14 CHAIRMAN LOCKYER: Is there anyone else who'd wish to
15 comment?

16 Let me just make comment, if I may, because I think some
17 of you are aware of my public comments with respect to the
18 Governor's confirmations.

19 What I was trying to say, perhaps inartfully, is that at
20 least for me, there used to be a presumption for the Governor's
21 nominees. Unless some glaring deficiencies popped up, we had a
22 almost habit of confirming the Governor's people.

23 That has changed for me. In my mind, the rule now for me
24 would be that they have to show convincing merit, rather than be
25 assumed to be fine. They have to show some merit.

26 And at least in my mind, Ms. Azvedo is a conscientious
27 member of the Unemployment Insurance Appeals Board. Everything I
28 hear from effected constituencies is very positive.

1 So, it would seem to me that this is an example of where
2 there is a meritorious appointment that we should agree with.

3 That's just my own thought about the matter.

4 I am, for one, prepared to vote yes, but I'll wait for the
5 appropriate motion from a Member.

6 SENATOR BEVERLY: I'll move we recommend the confirmation.

7 CHAIRMAN LOCKYER: Any other discussion? Can we call the
8 roll.

9 SECRETARY WEBB: Senator Ayala.

10 SENATOR AYALA: Aye.

11 SECRETARY WEBB: Ayala Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Petris.

14 SENATOR PETRIS: Aye.

15 SECRETARY WEBB: Petris Aye. Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

18 CHAIRMAN LOCKYER: Aye.

19 SECRETARY WEBB: Lockyer Aye. Five to zero.

20 CHAIRMAN LOCKYER: Thank you.

21 MS. AZVEDO: Thank you very much.

22 CHAIRMAN LOCKYER: Good luck to you.

23 MS. AZVEDO: I appreciate it.

24 CHAIRMAN LOCKYER: Our next is Mr. Manolakas, California
25 Horse Racing Board. Good afternoon.

26 MR. MANOLAKAS: Good afternoon.

27 CHAIRMAN LOCKYER: Did you want to start with any opening
28 comment?

1 MR. MANOLAKAS: No. I'd be more than happy to answer any
2 questions, but I have no comments to make at this time.

3 CHAIRMAN LOCKYER: Well, let me tell you some of the
4 things that staff background suggests that we inquire about.

5 As I understand the way the Board is structured, you have
6 committees that do a lot of the work.

7 MR. MANOLAKAS: That's correct.

8 CHAIRMAN LOCKYER: Do you serve or chair any committees?

9 MR. MANOLAKAS: I presently chair the Medication
10 Committee, and I'm also -- I was a recent appointment to the
11 Stewards Committee, and at one time I was also on the Pari-
12 mutuel, and then finally was negotiating the Indian compacts. I
13 was a committee of one on those.

14 CHAIRMAN LOCKYER: How long have you been on the Board?
15 Is this your second round?

16 MR. MANOLAKAS: Yes, it is. I served four years and was
17 just reappointed back in January.

18 CHAIRMAN LOCKYER: That's why you've done all this.
19 The Medication Committee, what's your understanding of the
20 statutory responsibility that you have?

21 MR. MANOLAKAS: Well, recently we have passed what we call
22 the Integrity in Racing program. What we attempted to do was to
23 work with Assemblyman Tucker in tightening down on the
24 regulations dealing with medication, while, at the same time,
25 trying to protect the equine.

26 There's a balance there. It's not always easy to strike.
27 You have certain types of medication that are a prohibited in one
28 form, but also serve a beneficial effect to the horse at the same

1 time.

2 So recently, what we've attempted to do is to classify the
3 drugs into certain levels and impose penalties if a violation
4 occurs with those -- within that certain level. But it is an
5 evolutionary process. We're constantly relooking at those
6 regulations to ensure that we are not omitting a drug from the
7 list or, alternatively, we're not prohibiting a drug substance
8 that could otherwise benefit the horse.

9 CHAIRMAN LOCKYER: As I understand it, this is like about
10 six years ago that legislation passed that authorized or directed
11 the Board to establish more effective medication policies.

12 MR. MANOLAKAS: I'm aware that there was legislation
13 passed prior to the time I was on the Board. It's taken quite
14 some time to implement the Integrity in Racing program, and it
15 was just this year that we finally got it into place.

16 I believe at that time, one of the more vocal supporters
17 was Assemblyman Tucker, and that's why we had worked closely
18 with him to ensure his concerns were met at the same time we
19 were passing these regulations.

20 CHAIRMAN LOCKYER: Have there been exemptions granted of
21 various drugs, or how does this work?

22 MR. MANOLAKAS: The way it works is, the stewards, who
23 are at the track, ultimately have some discretion. When they've
24 taken a case, they can find what are termed mitigating
25 circumstances.

26 There's a presumption of guilt on the part of the owner
27 and trainer. There's an absolute insurable. So, if there's a
28 proscribed medication in that horse, it's incumbent upon that

1 owner or trainer to prove that, one, it wasn't there via a split
2 sample, or alternatively, at the hearing before the stewards,
3 that trainer can prove his or her innocence.

4 And in the past -- and then after the stewards decide on a
5 particular case, it then goes to a referee if it is appealed, and
6 then ultimately it comes up before the Board to act as more or
7 less another appellate court to review just the law and the
8 application of the law to the facts.

9 Have there been instances where exemptions and/or
10 mitigating circumstances have been found? Yes.

11 In the past, have there been abuses? There have been
12 instances that preceded -- both preceded me and things that have
13 come to your attention where we have seen mistakes being made.
14 And we try to remedy that immediately.

15 CHAIRMAN LOCKYER: How many cases come to you? How long
16 have you been doing this?

17 MR. MANOLAKAS: I've been doing this for almost four years
18 now.

19 CHAIRMAN LOCKYER: On the medication?

20 MR. MANOLAKAS: I'm not sure --

21 CHAIRMAN LOCKYER: Was it called the Safety Committee once
22 and changed, or something?

23 MR. MANOLAKAS: Safety Committee is under the purview of
24 the Medication Committee. That's another area we've been working
25 on with the track safety regulations, but that also falls within
26 the --

27 CHAIRMAN LOCKYER: That's really different from the
28 Medication Committee?

1 MR. MANOLAKAS: No, it's the same.

2 CHAIRMAN LOCKYER: All right.

3 MR. MANOLAKAS: We sit as the same committee.

4 CHAIRMAN LOCKYER: Got it.

5 MR. MANOLAKAS: Put on a different hat.

6 I'd say in any given month that we have anywhere between
7 one and seven decisions that come up to us on executive session.
8 Of that, I'd say maybe three or four times a year we have
9 medication issues of those seven decisions. We have a group of
10 them -- you may be familiar with the Scopalomine issue that are
11 going to be coming up before the Board soon. Unfortunately, I'm
12 not able to comment on that, but that is one area that is
13 currently under consideration by the entire Board.

14 CHAIRMAN LOCKYER: To establish a policy?

15 MR. MANOLAKAS: Well, I think the policy has already been
16 established. I think that's what the Integrity in Racing program
17 was all about. We established the policy. I think we've put in
18 place regulations that allow the stewards to exercise their
19 discretion. We've implemented a training program where,
20 hopefully, we bring some continuity between the north and south
21 where the stewards are all working together off of one set of
22 rules.

23 In this particular instance, the Scopalomine cases were
24 decided prior to the time the Integrity in Racing program was in
25 place. So, the Board will have to deal in that light.

26 CHAIRMAN LOCKYER: Of the, I think you said three or four,
27 maybe, in the course of a year that come up for an appeal --

28 MR. MANOLAKAS: Of the medication-related violations.

1 CHAIRMAN LOCKYER: Yes, can you estimate the result of
2 those appeals in terms of how many are won by one side or the
3 other?

4 MR. MANOLAKAS: I wish I could. I don't have those --

5 CHAIRMAN LOCKYER: Do you have any just impression from
6 having seen them?

7 MR. MANOLAKAS: My sense is that generally speaking, we
8 uphold the referee's decision. And I would say out of a year, in
9 our meetings in executive session, there might be maybe a dozen
10 cases that we'll actually overturn the referee. And of that
11 dozen, I think the same percentage that -- a very small
12 percentage of those are related to medication, if any.

13 CHAIRMAN LOCKYER: How about safety generally? I have a
14 note that there may be currently proposed 20 new exemptions on
15 safety or medication. What's the issue there?

16 MR. MANOLAKAS: What we did, over probably a three or four
17 year period, we developed safety regulations. And that was
18 particular concerns. One, obviously, to ensure the protection of
19 the horse, but also the jockeys and other people that are
20 involved in racing.

21 As part of that program, we established rules and
22 regulations whereby each track had to comply with these rules and
23 regulations, while at the same time, trying to ensure that we're
24 not putting any one of these smaller training facilities and/or
25 tracks out of business by a decision we might make.

26 So, we have hard and fast rules, and then we have a
27 provision in these rules that allows for individual track owners
28 to come in and seek an exemption from the rules. And as part of

1 that process, what the Medication Committee does and ultimately
2 the Board, they make a decision based upon the benefit that would
3 be derived by enforcement of this particular rule versus the cost
4 associated with implementing this rule, and ultimately, whether
5 or not it's going to have the effect of putting the individual
6 tract or facility out of business.

7 In the case of the major tracks, prior to the adoption of
8 these track safety regulations, we almost had full compliance.
9 And as we've been going through the process, as they submit their
10 application for race dates, they come into further compliance.

11 It's with regard to the smaller tracks and training
12 facilities that, I think, you'll find we're more apt to look at
13 exemptions, and we grant those exemptions generally -- it's a
14 time exemption. We allow them to develop the funds or resources
15 to come into full compliance with the regulations at a time that
16 will allow them to not shut their doors, basically.

17 And you're right. I haven't reviewed the exemptions --

18 CHAIRMAN LOCKYER: So these are requests from the tracks
19 basically?

20 MR. MANOLAKAS: Yes.

21 CHAIRMAN LOCKYER: It's sort of like an OSHA rule, or
22 something, a safety-type thing like that?

23 MR. MANOLAKAS: Exactly. And the process is, we send out
24 our own staff to go ahead and review the exemptions. We had a
25 Track Safety Committee that helped develop these rules, and there
26 are several members on that Track Safety Committee whom are
27 viewed generally as those people that want to have 100 percent
28 compliance.

1 And we take input, and I would say that of all the track
2 safety regulation exemptions that have been granted, I can't
3 think of any, off the top of my head, where we haven't had a
4 concurrence from everybody in the audience that that particular
5 exemption should be granted.

6 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

7 SENATOR AYALA: Have revenues to the race track itself and
8 the wagering, has that declined as a result of satellite betting?

9 MR. MANOLAKAS: I think over all, we've seen a bit of a
10 decrease. We've certainly seen on-track handle -- the bets that
11 are made at the track -- decline significantly.

12 We've seen both the interstate and intrastate simulcast
13 wagering increase dramatically, almost to the point where it's
14 offset the decline in the on-track handle.

15 I think that one of the major challenges that we're faced
16 with, and particularly the tracks are faced with, is to ensure
17 that live racing continues, because the satellite betting that's
18 occurring provides less revenue to the state. Ultimately, it
19 doesn't create the jobs that we get from on-track handle. And I
20 think that everybody, including the private sector, is trying
21 diligently to adapt to the times.

22 SENATOR AYALA: But attendance has increased at the --

23 MR. MANOLAKAS: Attendance generally is down.

24 SENATOR AYALA: -- as a result of satellite betting?

25 MR. MANOLAKAS: We don't know --

26 SENATOR AYALA: You don't know whether that's true or not?

27 MR. MANOLAKAS: We can speculate that it's as a result of
28 satellite betting, but one also has to take into consideration

1 that there are other forms of entertainment out there.

2 And the horse racing industry, for many years, has been in
3 a monopolistic situation where they haven't had to compete, so
4 they're now having to learn how to compete in an industry where
5 they had a captive audience before.

6 So, I think it's a combination of the two events.

7 SENATOR AYALA: A lot of folks will put their bets in the
8 satellite area as opposed to going to the track because it's too
9 much of a problem sometimes. So, they attend like the Orange
10 Show in San Bernardino. That's always packed in there, you know.
11 These people probably wouldn't go to the race track because it's
12 quite a ways, a lot of traffic, and they go there.

13 In fact, I was there watching them one day, and a whole
14 bunch of people came in because it started to rain. These were
15 the construction workers who couldn't work, so they stopped there
16 on the way home and placed their bets. That type of people
17 wouldn't be attending the race track.

18 MR. MANOLAKAS: No. I think satellite wagering is here to
19 stay.

20 SENATOR AYALA: Do you support the card rooms to be placed
21 at the race track itself if they're operated by someone other
22 than the track management?

23 MR. MANOLAKAS: That's a very difficult issue, and there's
24 a lot more facts that I'd have to take in before I could give you
25 a specific answer.

26 Generally speaking, our responsibility, my responsibility
27 as a Board member, is to ensure that horse racing continues and
28 thrives.

1 To the extent that a card room would impact horse racing,
2 I would not be supportive.

3 I am extremely supportive of additional regulations for
4 card rooms.

5 We have not had to answer that particular question yet,
6 and I would like to reserve judgment until I know all the facts
7 before I answer.

8 SENATOR AYALA: Do you have any problem co-mingling the
9 racing activities with the card rooms that have been placed on
10 the same premises?

11 MR. MANOLAKAS: So long -- if it helps horse racing, if it
12 provided additional revenues to the horse racing industry and
13 ultimately the state, I would look at it a lot more favorably
14 than if it had any negative impact or no impact at all.

15 I think, generally speaking, I would not support something
16 like that, and I would have to be convinced otherwise that a card
17 room within the enclosure of the racing facility made sense for
18 horse racing.

19 SENATOR AYALA: I have a problem understanding how a card
20 room would enhance the revenues for the race track.

21 MR. MANOLAKAS: The only way it could possibly do that is
22 if the owners and trainers and the jockeys were able to meet with
23 the track owners and reach some type of agreement whereby they
24 would participate in the revenue generated from the card room.
25 And that is what has been discussed.

26 Barring that, then it would not benefit the industry.

27 SENATOR AYALA: Would you support the card room away from
28 the race track?

1 MR. MANOLAKAS: If you're asking my personal opinion, I'm
2 not generally supportive of card rooms.

3 SENATOR AYALA: Why not?

4 MR. MANOLAKAS: I think that in general, the gaming
5 industry has been one that has not necessarily provided revenue
6 or enhanced the economic situation of our society.

7 I think in the case of horse racing, it is an industry
8 unto itself. And there is millions and actually billions of
9 dollars that are generated as a result of the horse racing
10 industry, irrespective of the money that we make off of the
11 handle.

12 SENATOR AYALA: Generically it's gambling, either way.

13 MR. MANOLAKAS: It is; it's gambling, but it's supporting
14 a large industry as well.

15 I guess I'm able to differentiate that from what I know
16 about card rooms or gambling in that I see something not being
17 part of an entire industry, and one that simply has a tendency to
18 bring down a society as a whole as opposed to lift it up. And I
19 haven't seen that with regard to horse racing. I've seen just
20 the opposite.

21 SENATOR AYALA: Thank you.

22 CHAIRMAN LOCKYER: The stewards question. I guess maybe
23 you mentioned you serve on a committee?

24 MR. MANOLAKAS: I was just appointed to the Stewards
25 Committee.

26 CHAIRMAN LOCKYER: Have you been to any meetings yet?

27 MR. MANOLAKAS: Yes, I've attended two.

28 CHAIRMAN LOCKYER: We've heard, during previous

1 confirmations discussions, about complaints from some of the
2 women stewards that think they get the less desirable
3 appointments or duties.

4 Have you seen any pattern of discrimination of that sort?

5 MR. MANOLAKAS: I haven't seen it, and I know the instance
6 you're talking about.

7 There was a situation where there was a desire on the part
8 of the CHRB to go ahead and move the people that were working in
9 the south and have them work in the north, and vice-versa. And
10 the reason for that is because we were getting conflicting
11 results from our stewards in their decisions, and so we wanted to
12 expose everybody to one another.

13 As a part of that process, there were several individuals
14 -- I believe two of our five stewards -- whose assignments were
15 changing, and they were very upset. And they called me, and I
16 spoke with both of them. And I believe, at least in part due to
17 my urging, we were able to sit down and work out an arrangement
18 to accommodate them while still accomplishing our goal of
19 exposing all of the stewards to one another, at least the rules
20 and regulations that we're trying to apply.

21 So right now, it's my understanding that the female
22 stewards are satisfied with the assignments that they've been
23 given, and I hope will continue to be so.

24 And no, I haven't seen any evidence of discrimination.

25 CHAIRMAN LOCKYER: The Board does a lot of work with the
26 Thoroughbred Owners Association. Obviously, they're an
27 interested party in many of the issues before the Board.

28 I'm told that the Thoroughbred Owners doesn't allow women

1 to be members?

2 MR. MANOLAKAS: No, what happened -- and this is actually
3 something that our Board took action on, there was a recent
4 shake-up with the CTHBPA. The trainers were then broken out
5 where you now have two different organizations: a group for the
6 trainers, a group for the owners.

7 As part of the TOC, Thoroughbred Owners group, they had to
8 put together a set of bylaws which ultimately needed to be
9 approved by the Board, our board. When the bylaws came up before
10 our Board, there was a provision in there that indicated that a
11 spouse of a trainer could not serve as a board member on the TOC.
12 That provision was asked to be removed by our Board.

13 And Commissioner Tourtelot is a committee who is now
14 working with the TOC to accomplish their goal, which is to keep
15 the two organizations separate, that trainer and owner
16 representation, without having any hint of discrimination in it.

17 I don't think it was the TOC's intent to discriminate.
18 They simply wanted to keep their organization separate.

19 And as it turned out, most of the owners happened to be
20 male, and several of the trainers are female.

21 CHAIRMAN LOCKYER: Senator Ayala.

22 SENATOR AYALA: I have one more question.

23 In reading the duties of the Board, one of them, among
24 others, says that the sanctioning of every person who
25 participates in any phase of horse racing.

26 How do you do that? To what level do you sanction their
27 position?

28 MR. MANOLAKAS: Could you read that over again? I'm

1 sorry.

2 SENATOR AYALA: It says that among the other duties of the
3 Board is to the sanctioning of every person who participates in
4 any phase of horse racing.

5 MR. MANOLAKAS: This is a highly regulated industry. I
6 don't know if we get -- if we achieve the goal that you've just
7 mentioned in the legislation.

8 I know that every facet of the industry that I've been
9 involved in, from the licensees that are walking the horses, on
10 up to the people that are ultimately our eyes and ears to the
11 track, the stewards, have to go through a licensing process. The
12 farriers have to undergo training with us. It is a highly
13 regulated industry, and I think we do our best with the staff
14 that we have to ensure that they are all qualified.

15 SENATOR AYALA: Does this mean that you approve every
16 single application that comes in terms of the track?

17 MR. MANOLAKAS: Quite the contrary. I think that the
18 application process is viewed as a privilege to the tracks. They
19 have to come to the Board and convince us --

20 SENATOR AYALA: Who's they?

21 MR. MANOLAKAS: The owners or the people who are putting
22 on the meets, if that's what you're referring to, have to come to
23 us as part of the application process and persuade us that the
24 dates they want to run, the --

25 SENATOR AYALA: I'm not referring to the date. I'm
26 referring to the people that are employed at the race track.
27 Every phase of the operation, how far do you go down the ladder
28 to approve these people?

1 MR. MANOLAKAS: The Board doesn't take part in that. We
2 have an Executive Director, who, by the way, is here today, and
3 we have licensees that have to go through a process that is all
4 handled by our staff.

5 SENATOR AYALA: It isn't quite true, then, that you have
6 to sanction every person who participate in any phase of the
7 horse racing. You don't do that.

8 MR. MANOLAKAS: That seems awfully broad, and as in
9 individual Commissioner, I certainly don't.

10 SENATOR AYALA: Thank you.

11 CHAIRMAN LOCKYER: Any other questions? Thank you.

12 As difficult as it is with a fellow graduate of McGeorge -
13 - you were there a speck before me, I think. Well, I went for a
14 long time, so you probably began after me and finished before me,
15 is more likely -- this is a circumstance in which I think it's
16 appropriate for the Committee to hold the confirmation in
17 Committee.

18 We can do that by voting such, or not, or defeating a
19 motion to pass it out, or whatever ways Members of the Committee
20 would be more comfortable.

21 SENATOR LEWIS: Can we just put it over?

22 CHAIRMAN LOCKYER: I don't think there's any point in
23 putting it over. I think that's a routine thing we do at any
24 Member's request, so we will if that's what you wish to do.

25 But just so we've indicated, at least there's been some
26 public indication of difficulty, this is a nomination, I think,
27 we should hold in Committee.

28 SENATOR BEVERLY: What is the deadline date?

1 CHAIRMAN LOCKYER: Before the end of the year.

2 MS. MICHEL: January first is when his time runs out.

3 CHAIRMAN LOCKYER: Is there anyone present who would wish
4 to comment?

5 MR. MANOLAKAS: May I ask a question?

6 I'm not sure I understand the protocol. You're suggesting
7 that it be held over for what reason?

8 CHAIRMAN LOCKYER: That which I explained earlier. That
9 is, when I think the Governor's nominees are basically a
10 political act on his part, where he's appointing people to
11 commissions who may or may not have reason to be there, expertise
12 or whatever, but essentially it's rewarding contributors, I'm
13 going to be much more critical of that type of appointee.

14 You're a generous man, \$92,495.

15 So, I don't dispute your right to participate in political
16 campaigns as you see fit, but I think, given the new relationship
17 with the governor, we do not need to presume that his donors
18 should be confirmed by the State Senate.

19 MR. MANOLAKAS: Okay.

20 CHAIRMAN LOCKYER: But it's been asked to be put over, and
21 that will be the order, and there'll be an opportunity for people
22 to mull and think a little longer on the subject.

23 MR. MANOLAKAS: Very good.

24 [Thereupon this portion of the
25 Senate Rules Committee hearing
26 was terminated at approximately
27 2:52 P.M.]

28 --oo0oo--

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair
SENATOR ROBERT BEVERLY, Vice Chair
SENATOR RUBEN AYALA
SENATOR JOHN LEWIS
SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer
PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ARTHUR DANNER, Member
California State Lottery Commission
JOHN D. DUNLAP, III, Chair
Air Resources Board
GARY PATTON, General Counsel
Planning and Conservation League
MARVIN BRODY
New United Motors Manufacturing, Inc.
United Auto Workers
LEONARD ROBINSON, Environmental Safety Manager
Tamco Steel
JANET HATHAWAY
Natural Resources Defense Council
MICHAEL HERTEL
Southern California Edison
BOB FEENSTRA
Milk Producers Council
CLIFF GLADSTEIN, President
Board of Directors
Coalition for Clean Air

APPEARANCES (Continued)

KEN SELOVER, Executive Director
Yolo Solano Air Quality Management District

JOHN WHITE
Sierra Club

RICHARD VIND
Ethanol Industry

NEIL M. KOEHLER, Director
California Renewable Fuels Council

SENATOR CHARLES CALDERON

SENATOR QUENTIN KOPP

MICHAEL KENNY, Chief Counsel
Air Resources Board

BEN E. DALE, Deputy
Legislative Counsel's Office

WILLIAM A. MERKLE, Warden
California Correctional Center
Lassen County

JAMES GOMEZ, Director
California Department of Corrections

JOHN M. MAYFIELD, Jr., Member
California Regional Water Quality Control Board
North Coast Region

BRENDA ADELMAN
Russian River Watershed Protection Committee

DON ZEDRICK
Environmental Resource Council

BOB BORZELLERI, Chief Deputy Director
Department of Toxic Substances Control

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We are going to try to work through the gubernatorial appointees first, since that necessitates people, appointees, being here as well as witnesses, and then go to the legislative calendar and rule waivers, and so on.

So, the first one we have before us is Mr. Danner, appointed to the Lottery Commission.

Art, do you want to take a seat? How are you this afternoon?

MR. DANNER: Very good, thank you, Mr. Chairman.

CHAIRMAN LOCKYER: Do you want to start with any kind of beginning statement?

MR. DANNER: I really don't have a prepared written statement, other than to say that this service on the Commission so far has been very interesting, certainly diverse, and something that's very challenging.

But if you have any questions, I'm certainly glad to answer those.

CHAIRMAN LOCKYER: One of the issues that's been identified for us is the growth in administrative overhead, where, as I recall the rough numbers, it was about 50 percent higher or a little more than that now than a decade ago.

Have you developed any opinions about that trend and what's going on?

MR. DANNER: I really haven't over the time that I've been there. But I certainly am interested in that issue, and I understand that that is a concern.

1 I know that some of the questions I have had, have had to
2 do with those issues. And hopefully, as we move on, I'll have a
3 better picture of that.

4 I know in comparing the administrative costs here and
5 those in other lotteries, it's many times an apples and oranges
6 picture, but part of the thing for me has been an educational
7 process to learn just exactly what we're comparing.

8 And I understand that has been a concern, and I can
9 understand why.

10 CHAIRMAN LOCKYER: Some big states, or other states, I
11 guess the ones I recall are New York and Florida, actually yield
12 a larger percentage for public schools. I assume that means
13 administration is lower, although I suppose it could be the
14 prizes are lower; I don't know which. But there's some states,
15 arguably, doing a better job in funding schools.

16 MR. DANNER: Well, I think you're right. There are some
17 other states that have lower administrative costs. And I'm led
18 to understand at this point, and as I said, it's an educational
19 process for me, but that some of that has to do with what other
20 services they're able to get as a result of being associated with
21 the state. For instance, the security, I think, in the State of
22 New Jersey is handled by the State Police.

23 CHAIRMAN LOCKYER: It's not on the Lottery budget.

24 MR. DANNER: That's right.

25 And so, but I share your concern. One of the reasons I
26 have an interest in this was to accentuate as much as possible
27 the amounts of monies that would go to the educational category.

28 CHAIRMAN LOCKYER: Just sort of thinking out loud, I guess

1 there's a possibility, too, that in some of those Eastern states,
2 there's a number of states that have a lottery that are all in
3 the same media market. So, the benefits of inducing
4 participation might, in effect, get shared by Pennsylvania buying
5 in markets that would be seen by other states, and vice-versa.

6 MR. DANNER: Having grown up in the East, I can attest to
7 that, that the media market and the market that you're talking
8 about, it's a different one than the State of California. And
9 while we probably have six or seven out here, states like New
10 York really have one, New Jersey just primarily one, and the
11 costs, then, are necessarily different from that.

12 CHAIRMAN LOCKYER: Have there been reviews of the
13 demographics of lottery bettors? Do you know who they are?

14 MR. DANNER: We do. We have some reports back to us on a
15 regular basis as to who the people are who do participate in the
16 Lottery. And we review those at the Commission level from time
17 to time. But I think we're due just to get another one of those
18 here very shortly.

19 CHAIRMAN LOCKYER: Are there any substantial reasons to
20 worry about people who are having trouble paying the milk bill
21 that might participate in the Lottery?

22 MR. DANNER: I think that's always a concern. And the
23 question is, you know, just where are the people who are
24 participating getting the money so that we're not, essentially,
25 taxing the poor, so to speak.

26 And I think that one of the things that we're aware of and
27 sensitive to is that, and I'll be interested in what this
28 additional picture shows us in that regard, because I know, for

1 one, I'd be real interested in that.

2 CHAIRMAN LOCKYER: There's some thought that marketing may
3 be disproportionately targeted at those more marginalized
4 populations.

5 To the extent that that's true or not, I hope you'll at
6 least think about it.

7 MR. DANNER: Actually, I looked at that, and I saw that.
8 And I was fairly impressed, at least with the information I've
9 received so far, that that's not the case. That it's fairly
10 proportionate.

11 But I think that it needs to be something that we're
12 continuously, you know, looking at. And obviously, you balance
13 that as against the fact that it's the advertising that seems to
14 really generate the playership. And boy, when it goes up in
15 terms of the big lottery, that's where a lot of money comes in;
16 no question about it.

17 CHAIRMAN LOCKYER: A different topic is the Brown Act
18 questions.

19 While the subcommittees of two, I guess, are not yet
20 covered by the Brown Act, although my recollection is that
21 Senator Kopp, I think, had a bill that would impose the Brown-
22 Keene obligation upon such subcommittees, you serve a couple of
23 committees, and they don't have open meeting requirements.

24 I guess my question is how you feel about that, and do you
25 think maybe there should be either a change in the law or some
26 voluntary effort on the part of the committees to meet those
27 burdens?

28 MR. DANNER: Well, I think the present structure we're in,

1 you're quite right, has a subcommittee structure. And for
2 example, I'm on the Procurement -- if I'm saying that right here
3 -- Committee, and also the Marketing Committee. And the access
4 now that we have to the staff in terms of dealing with the
5 particular issues that come up in that category, and the way in
6 which we're structured allows us to be flexible enough to take,
7 you know, full advantage of dealing with the business of the
8 Lottery.

9 Now obviously, it would be probably more difficult to
10 schedule those in a way that they would be open. I don't see any
11 objection to that. I certainly wouldn't. I mean, everything
12 that we've done in those meetings is absolutely something that
13 could be open to the public. And I think it'd be just a question
14 of scheduling and probably planning ahead more and so --

15 CHAIRMAN LOCKYER: Give notice or whatever.

16 MR. DANNER: That's exactly right, and giving notice. And
17 so, I don't see any difficulty if that's the next step.

18 CHAIRMAN LOCKYER: I hope maybe you'll, if you're so
19 inclined, raise that matter with other Commissioners just to get
20 some interaction.

21 MR. DANNER: Okay, good question.

22 CHAIRMAN LOCKYER: Other questions from Members at all?
23 Senator Ayala.

24 SENATOR AYALA: Mr. Danner, you are the District Attorney
25 of Santa Cruz County.

26 MR. DANNER: That's right.

27 SENATOR AYALA: Are there any problems? Are the two jobs
28 compatible, the latter and the District Attorney's Office?

1 MR. DANNER: I kind of wondered that myself when we first
2 started. And I think they are in one respect, and that is that
3 in addition to the things that I do as a Commissioner, we also
4 have what we call a Law Enforcement Committee, which I attend.
5 And the purpose of that is to review games that are proposed by
6 the Lottery. And I think that's an excellent idea. We have the
7 Sheriff of Sacramento County, the Police Chief, I believe, of
8 Modesto, a number of other law enforcement officials who, along
9 with staff members and myself, review games from the standpoint
10 of any conflicts or problems with law enforcement.

11 And as a result of that, there have been a number of
12 proposed games that just have not been put into place because of
13 the concerns and objections.

14 In that respect, I think my job as the District Attorney
15 has been very helpful.

16 SENATOR AYALA: The Lottery sales declined dramatically in
17 the 1990s. Other than the economy being what it is, do you know
18 what has caused that, the sales declining?

19 MR. DANNER: I think you put your finger on the main
20 thing, the economics.

21 But I might say that at least insofar as what I've seen,
22 the playership seems to be almost directly proportional in terms
23 of the advertising that is done. And I think we'd increased some
24 22 to 23 percent this year over last year, and so we're pleased
25 with that.

26 We target it for a conservative 5 to 10 percent, but other
27 than that, I'm probably as perplexed as you are.

28 SENATOR AYALA: People just aren't buying, are they?

1 MR. DANNER: That's right.

2 SENATOR AYALA: You mentioned you have to advertise a
3 little bit more, perhaps. Is that part of the administrative
4 cost of the Commission?

5 MR. DANNER: Sure. And of course, as you probably are
6 aware, it cannot exceed a certain percentage, and of course it
7 hasn't, but it has increased, but so, then, has the playership
8 and revenue as a result of that. And yes, it is part of that.

9 SENATOR AYALA: From '86-'87 to now, the costs of
10 administration have gone up over 50 percent.

11 MR. DANNER: As the Chairman was saying, and it's an
12 interesting thing. Of course, part of that has been, as we
13 talked about, the advertising expense, and part of it has to do
14 with salaries and the cost of living, et cetera.

15 But I think -- and of course, I wasn't part of the
16 Commission at that point -- but I think that is a concern to all
17 of us on the Commission.

18 SENATOR AYALA: You're not competing with card games and
19 Indian Reservations, casinos.

20 MR. DANNER: We might be soon, I guess; I don't know.

21 SENATOR AYALA: Do you know you can compete with these
22 folks out there, the Lottery?

23 MR. DANNER: Was the question do you think we can compete?

24 SENATOR AYALA: Yes.

25 MR. DANNER: Yes, I think based on what I've seen so far,
26 I think we can compete.

27 I think that ahead of us, there's going to be some
28 unwritten chapters yet in terms of what exactly gaming is all

1 about on lands owned by different tribes in the State of
2 California.

3 SENATOR AYALA: One advantage you have is that lotteries
4 everywhere, as opposed to limited resources of the casinos and
5 the other card games and card rooms. They are limited as of now.

6 MR. DANNER: True.

7 SENATOR AYALA: You probably have an advantage by the fact
8 that you're out there in public more so than the others.

9 MR. DANNER: We've kind of got a monopoly, right.

10 SENATOR AYALA: I don't have other questions, Mr.
11 Chairman.

12 CHAIRMAN LOCKYER: Is there anyone present who would wish
13 to comment either for or against this very fine nominee?

14 MR. DANNER: Thank you very much, Mr. Chairman.

15 CHAIRMAN LOCKYER: How's Professor Candless doing?

16 MR. DANNER: She mentioned to me that she wanted me to
17 convey her best wishes to you, and I don't know if you wanted to
18 talk about your grade in that course or not.

19 [Laughter.]

20 CHAIRMAN LOCKYER: Actually, it was okay.

21 MR. DANNER: I think it was, and that's why I mentioned
22 it.

23 CHAIRMAN LOCKYER: But she had to struggle, teaching me
24 evidence at night.

25 MR. DANNER: She said you were a very good student.

26 CHAIRMAN LOCKYER: He hired her.

27 Questions, Senator Petris.

28 SENATOR PETRIS: Maybe I can ask Mr. Rollens. This thing

1 that sticks in my mind, you're an elected official. You're also
2 a member of the Commission.

3 Somewhere along the line, I was told that you can't hold
4 more than one office at a time.

5 When I was practicing law a hundred years ago, I was a
6 Notary Public. Then I got elected to the Assembly, and I was
7 told I was holding two state offices and I had to give up one of
8 them. So, after thinking about it for 30 days, I gave up the
9 Notary.

10 So, I'm wondering, have you encountered that at all with
11 respect to the two offices?

12 CHAIRMAN LOCKYER: We don't want you to sacrifice the real
13 job.

14 MR. DANNER: Okay, and I certainly won't. It probably
15 wouldn't take me quite as long as you have suggested if I had
16 that choice.

17 As far as I know, and I actually asked the AG if they saw
18 anything with regard to that and I haven't received anything.
19 But I might be able to ask a former colleague of yours, Mr. Jack
20 Meehan now that he's teaching over at San Francisco State. Maybe
21 he could give us the answer to that.

22 SENATOR PETRIS: Maybe that doesn't apply any more, but
23 I've run into it from time to time.

24 It was just heart breaking to have to give up being a
25 Notary Public.

26 [Laughter.]

27 CHAIRMAN LOCKYER: I wonder if Ms. Michel, did she get
28 out? Were you asking a question about that issue, Ms. Michel?

1 MS. MICHEL: No.

2 CHAIRMAN LOCKYER: Would you just make sure we get an
3 answer sometime in writing on that?

4 I'm sorry; I didn't mean to interrupt.

5 Any other questions? What's the pleasure?

6 SENATOR BEVERLY: Move we recommend confirmation.

7 CHAIRMAN LOCKYER: All right, we have a motion. Let's
8 call the roll.

9 SECRETARY WEBB: Senator Ayala. Senator Lewis.

10 SENATOR LEWIS: Aye.

11 SECRETARY WEBB: Lewis Aye. Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Petris Aye. Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Senator Lockyer.

16 CHAIRMAN LOCKYER: Aye.

17 SECRETARY WEBB: Lockyer Aye. Four to zero.

18 SENATOR AYALA: I vote Aye.

19 SECRETARY WEBB: Ayala Aye. Five to zero.

20 CHAIRMAN LOCKYER: All right.

21 MR. DANNER: Thank you very much.

22 CHAIRMAN LOCKYER: Good luck.

23 Mr. Dunlap. I apologize for the fact that I just get
24 called to the Assembly Appropriations. These days, you show up
25 when they're meeting.

26 So, I'm hoping that maybe, Mr. Vice Chair, you will
27 perhaps take testimony pro and con first, or something, so I'll
28 have a chance to hear a good part of the interview and not miss

1 that. Would that be agreeable?

2 Maybe after Mr. Dunlap opens, you could shift to that,
3 because I think there are a number that do want to testify.

4 Then I could get back quickly.

5 SENATOR BEVERLY: All right.

6 Mr. Dunlap, do you have an opening statement?

7 MR. DUNLAP: Yes, I do, a brief one.

8 Mr. Chairman, Mr. Vice Chairman, and Members, for the
9 record, my name is John Dunlap. I'm honored to be here today as
10 Governor Wilson's nominee for Chairman of the Air Resources
11 Board.

12 I would like to begin my appearance here today on a
13 personal note. I would like to explain why I want to be the
14 Chairman of the Board, and what I hope to accomplish.

15 I was born near Detroit, Michigan, and at the age of
16 twelve, I moved with my family to Ontario in western San
17 Bernardino County. And I've resided in the Inland Empire ever
18 since.

19 As you know, the Inland Empire region has the worst air
20 pollution in the United States. You've all heard statistics
21 about the health effects and financial costs of air pollution. I
22 can tell you from experience that ozone, carbon monoxide, sulfur
23 dioxide, nitrogen oxide, and particulates not only eat away at
24 the lungs, but at the human psyche as well.

25 I still remember June 27th, 1974, the day of the last
26 Stage 3 Smog Alert in California. The ozone level peaked in the
27 Ontario-Upland area, where I just had concluded my high school
28 year. Those of us who lived through a Stage 3 Alert will never

1 forget it: the warnings to the public to stay indoors, and the
2 painful burning sensation in your eyes and lungs.

3 As a result of those experiences, I developed a life-long
4 interest in air pollution and have spent most of my adult life
5 working to improve air quality.

6 After graduating from the University of Redlands, I earned
7 my Master's Degree from Claremont Graduate School, where I helped
8 conduct graduate level studies of air quality policy. I even
9 appeared before the Air Resources Board as a graduate student in
10 1981 to discuss our work.

11 I worked for nine years with the South Coast Air Quality
12 Management District, the last four years as the District's Public
13 Advisor. In that legislatively mandated role, I was responsible
14 for the District's public outreach, education, and business
15 assistance programs, and served as the primary communications
16 link between the District and the public.

17 I worked very closely with businesses, environmental and
18 public interest groups, and others affected by District rules,
19 which sensitized me to the importance of crafting regulatory
20 programs that accomplish ambitious clean air goals by receiving
21 the support of the regulated community and public at large.

22 I left the South Coast District to accept a new post as
23 Chief Deputy Director at the Department of Toxic Substances
24 Control. At DTSC, I again served as a major focal point for
25 communications between the stakeholders and the Department. I
26 spent two years at DTSC before my appointment this past December
27 as Chair of the Air Resources Board.

28 Thanks to the collaborative efforts of the Air Resources

1 Board and the State's local air districts, we have made dramatic
2 gains in reducing air pollution during the last 25 years.
3 However, many regions of California are still away from achieving
4 acceptable air quality.

5 I relish the opportunity to lead the Air Resources Board
6 past the difficult challenges it will face in the next several
7 years. The Board is continuously reviewing its bold requirements
8 for the marketing of Zero Emission Vehicles in 1998, but I think
9 that the clean car requirements are sound, and I will continue
10 defending them.

11 We are requiring the world's cleanest burning gasoline to
12 make its way to the pumps by next spring. We're pioneering the
13 developing of air quality regulations for many consumer products,
14 and we are pursuing the most effective industrial pollution-
15 cutting measures.

16 I have always believed that a healthy economy supports the
17 technologies and resources to protect the environment. I
18 strongly support the Air Resources Board's ongoing efforts to de-
19 emphasize command and control measures when possible in favor of
20 market mechanisms in which we set challenging standards and let
21 industry devise the most cost-effective ways of obtaining those
22 standards.

23 The Board has enjoyed considerable success in working with
24 the free market instead of against it, and I want to see that
25 continue.

26 I also believe communication is the key to being a
27 successful regulator, and I welcome opportunities to discuss air
28 quality issues with environmentalists, industry, and other

1 stakeholders.

2 I would like all of our stockholders to keep their eyes on
3 the prize, which is clean air for all Californians.

4 California has made enormous progress toward achieving
5 clean air, and we face several key challenges in the next twelve
6 months: from Zero Emission Vehicles, to reformulated gasoline,
7 and the continuing development and introduction of environmental
8 technology.

9 I have spent my adult life working in this field. I know
10 it. I care deeply about it, and I believe I am well prepared to
11 be of service.

12 I would be honored by your support, and I'm happy to
13 answer any questions you may have.

14 Thank you.

15 SENATOR BEVERLY: Thank you, Mr. Dunlap.

16 As the Chairman suggested, we'll defer questions from the
17 Members for the moment.

18 We'll hear from people present who wish to testify for and
19 against the nomination. First if you're in favor.

20 MR. PATTON: Mr. Chairman, Gary Patton, General Counsel of
21 Planning and Conservation League.

22 Just briefly, we have submitted a letter urging you to
23 confirm Mr. Dunlap. I wanted to appear personally to say that
24 what he said in his opening statement gives us comfort. He is
25 willing to talk with us and has been doing that.

26 We'd like to continue to have the opportunity to talk with
27 him, particularly as we face both reformulated gasoline and the
28 Zero Emission Vehicles.

1 So, we would urge an aye vote for Mr. Dunlap.

2 SENATOR BEVERLY: Any questions of the witness?

3 Next.

4 MR. BRODY: Mr. Chairman, Senators, my name is Marv Brody.
5 I'm here representing New United Motors Manufacturing,
6 Incorporated, NUMMI, the GM-Toyota joint venture in Fremont,
7 California, as well as the United Auto Workers.

8 We jointly support Governor Wilson's appointment of John
9 Dunlap to the California Air Resources Board.

10 Prior to his appointment, we worked with him and his staff
11 in Southern California to tackle the immense problems of
12 emissions in that area. And recently, since his appointment, in
13 Northern California, where together we've been able to clean the
14 air in the Bay Area to approach federal government standards.

15 As we've worked together, we found him fair and equitable,
16 a problem-solver, not an ideologue, a person deeply and equally
17 concerned for the environment of California as well as the
18 economy of California and the jobs it embraces in the
19 manufacturing sector.

20 Again, we support the appointment and urge you to do so.

21 SENATOR BEVERLY: Any questions of Mr. Brody?

22 Next witness.

23 MR. ROBINSON: Honorable Committee, my name is Leonard
24 Robinson. I'm the Environmental Safety Manager at Tamco,
25 California's last steel mill, located in Rancho Cucumonga, an
26 area Mr. Dunlap's familiar with.

27 Again, we're the last steel mill, Last of the Mohicans, as
28 far as steel mills.

1 I've had the pleasure of working with Mr. Dunlap on
2 several occasions, most notably was four years ago. His support
3 and guidance enabled us to start a revolutionary used oil filter
4 recycling program. This program -- the synergistic effect of
5 this program of industry and government working together has
6 yielded positive benefits for the California environment.

7 Mr. Dunlap's support helped us address the final hurdle,
8 which was the South Coast Air Quality Management District. We
9 addressed all the issues, and we were able to go forth with the
10 program.

11 Mr. Dunlap's support carried on when he was with the Cal
12 EPA Department of Toxics Substances Control.

13 Again, I come from Tamco, and we fully support the
14 confirmation of John Dunlap as Chair of the Air Resources Board.
15 He is a problem-solver. He gets directly to the point. He has
16 an open ear, an open mind. He's not going -- he doesn't rubber-
17 stamp. He analyzes; he looks at it. And he has that unique
18 ability to balance economics, job impacts, and the environment.

19 Again, we offer our support.

20 SENATOR BEVERLY: Thank you.

21 Any questions of Mr. Robinson?

22 Thank you, sir. Next witness.

23 MS. HATHAWAY: I'm Janet Hathaway of the Natural Resources
24 Defense Council, and I wanted to take just a moment of your time
25 to tell you why NRDC is strongly in support of the confirmation
26 of John Dunlap as the Chair of the Air Resources Board.

27 We believe that the Air Resources Board's mission is an
28 extremely important one of the State of California. The healthy

1 air quality that we all seek is not easy to achieve, at the same
2 time as ensuring that our economy continues to grow. But it must
3 be done, and it can be done.

4 To do that, the ARB very much needs a professional and
5 talented leader, and that they would have if John Dunlap is
6 confirmed as Chairman.

7 He has shown you his commitment to public service and his
8 long and distinguished career. He has a very complex and
9 sophisticated understanding of the air quality issues of the
10 state, as well as an understanding of the technological
11 opportunities that are out there to solve our air quality
12 problems.

13 He has shown an unusual degree of willingness and ability
14 to work with a range of different stakeholders and with different
15 coalitions, all whenever they can benefit the State of
16 California.

17 We definitely need his judgment and leadership if we're
18 going to forge the healthier air quality that Californians do
19 need, and I hope that on behalf of NRDC's 30,000 California
20 members, you will see that he can be a very distinguished and
21 beneficial Chair of this Board.

22 I do urge your support for this very good appointment.

23 SENATOR BEVERLY: Thank you. Any questions of Ms.
24 Hathaway?

25 Next witness.

26 MR. HERTEL: Mr. Chairman and Members, my name is Michael
27 Hertel, and I represent Southern California Edison Company.

28 We're here to strongly support the nomination of John

1 Dunlap to the Air Resources Board Chair.

2 John and I are personal friends, having gone to the same
3 graduate school. Unfortunately, he went there much later than I
4 did. But I've known him for the past ten years or so
5 professionally, and I have to say that his skill at bringing
6 people together of diverse backgrounds, and often in opposition
7 to one another, and finding a solution to problems, strikes me
8 that he will be a very excellent nominee if you confirm him to
9 this Chairmanship, and I urge you to do so.

10 Thank you.

11 SENATOR BEVERLY: Thank you. Any questions of the
12 gentleman?

13 Mr. Feenstra.

14 MR. FEENSTRA: Mr. Chairman, Members of the Committee, my
15 name is Bob Feenstra. I represent the Milk Producers Council
16 located in Southern California.

17 I'm here today to speak on behalf of the Southern
18 California dairy industry, which is the largest concentration of
19 dairy cows in the world.

20 We're here today in total support of the confirmation of
21 John Dunlap as Chairman of the California Air Resources Board.

22 Dairy in California is number one in the nation. We
23 represent over \$4½ billion to the economy of the State of
24 California. Wisconsin is now number two, and Mr. Chairman, they
25 don't know what to do with all those license plates that say "The
26 Dairy State" of the United States.

27 SENATOR BEVERLY: How many cows do we have?

28 MR. FEENSTRA: We have over a million and a half. That's

1 a lot of cows.

2 The California Air Resources Board and the South Coast Air
3 Quality Management District is in the process of review and
4 scientific study of the dairies in California and agriculture as
5 well.

6 Chairman Dunlap has already toured Southern California
7 dairy industries and has met with my people to review and discuss
8 the problems that we face as we move to the 21st Century.

9 We are very pleased with his qualifications, with his
10 extensive knowledge in air quality. His experience goes many
11 years into the South Coast Air Management area, of which we are a
12 part. His understanding of industry problems and his willingness
13 to work on those with us is very appreciated.

14 He has a great reputation. It's a pleasure for us to work
15 with him.

16 The best thing I can say to you today is that Chairman
17 Dunlap is a real professional in every sense. He takes his job
18 very seriously. He's fair but tough on air quality management
19 issues when it comes to agriculture and dairy.

20 We believe that he wants California to stay number one in
21 growth and economy, number one in jobs and industry, and to lead
22 the nation in air quality improvement.

23 California in dairy and in agriculture has always been
24 number one. The nation has looked to California. We believe
25 that they'll look to California for air quality.

26 It is a pleasure and an honor for me today to recommend
27 that you support and approve his confirmation as Chairman to the
28 Air Resources Board.

1 SENATOR BEVERLY: Thank you. Any questions?

2 Senator Ruben, you have a good portion of those cows.

3 SENATOR AYALA: One million cows in my district. None of
4 them vote.

5 [Laughter.]

6 MR. FEENSTRA: Senator Ayala, if they did, you could run
7 for President or Governor of California.

8 SENATOR BEVERLY: Thank you. Next witness in support.

9 MR. GLADSTEIN: Thank you, Mr. Chairman and Members of the
10 Committee for this opportunity to address you here today.

11 My name is Cliff Gladstein. I'm the President of the
12 Board of Directors of the Coalition for Clean Air, Southern
13 California's largest community-based environmental organization
14 dedicated solely to the reduction and elimination of air
15 pollution.

16 I'm here to express the strong support of the Coalition
17 for Clean Air for the confirmation of John Dunlap to the position
18 of Chairman of the Air Resources Board. Mr. Dunlap is one of the
19 most qualified candidates for this position ever to be put before
20 this Committee for consideration. His long history with air
21 quality issues, with communities impacted by air pollution, and
22 with businesses which have to comply with air quality regulations
23 leave no doubt that he has the experience and credentials to do
24 this job.

25 John has demonstrated time and again that he can bring
26 diverse parties together to discuss contentious issues, bring
27 conflict to resolution, and move the air quality agenda forward.

28 The Coalition supports John's confirmation because we know

1 that he cares about clean air. He comes from a community heavily
2 impacted by polluted air. He has seen the consequences, both in
3 public health and economic terms of air pollution, and has
4 dedicated himself to bringing clean air to all Californians.

5 And he knows that unless he does his job, thousands of
6 Californians will continue to suffer and die because of air
7 pollution.

8 If John Dunlap isn't confirmed, we at the Coalition fear
9 what may happen to the momentum which has built up over the past
10 two decades to achieve healthful air for all Californians.
11 Twenty years ago, air pollution in Southern California exceeded
12 federal health-based air quality standards four out of every five
13 days. Today, that figure is down to two of every five days.

14 We need John Dunlap's leadership, protecting tough health
15 standards, and effective Zero Emission Vehicles program, and
16 cleaner fuel quality standards to help us tackle the remaining 40
17 percent.

18 Thank you.

19 SENATOR BEVERLY: Thank you. Any questions?

20 Next witness.

21 MR. SELOVER: Good afternoon, Mr. Chairman and Members of
22 the Committee.

23 My name is Ken Selover. I am the Executive Director of
24 the Yolo Solano Air Quality Management District.

25 I'm here today to urge your confirmation of Mr. Dunlap as
26 Chair of the Air Resources Board.

27 In the past 20 years, I've worked for the private sector
28 and the public sector in air quality management, and I must say

1 that today you're very fortunate to have such a qualified
2 candidate. Clearly, Mr. Dunlap's interactive style and his good
3 communication and understanding of local government issues have
4 served California well.

5 I urge you to vote for his nomination and confirm him.

6 Thank you.

7 SENATOR BEVERLY: Thank you. Any questions?

8 Next witness.

9 MR. WHITE: Mr. Chairman and Members, John White with the
10 Sierra Club.

11 We're happy to be here today in support of John Dunlap's
12 confirmation. Since his appointment, Chairman Dunlap has worked
13 hard to build some bridges that had frayed a little bit over the
14 past several years. He's been accessible. He's been straight-
15 forward, and we look forward to working with him and believe that
16 he will have a fine record of achievement over the course of his
17 term.

18 Thank you.

19 SENATOR BEVERLY: Any questions of Mr. White?

20 Any further witnesses in support? Let's hear from the
21 opposition. Anybody in opposition?

22 MR. VIND: Mr. Chairman, I'm not in opposition. I'm just
23 a little late getting up here.

24 My name is Richard Vind. I'm an ethanol company
25 headquartered in Orange County, California.

26 I initially had come up to Sacramento today to testify
27 against Mr. Dunlap's confirmation, but he has assured me on the
28 basis of the conversation I've had with him earlier today that

1 he'll take very positive, definite steps to correct some of the
2 problems that have existed between the Air Resources Board, Cal
3 EPA, and the ethanol industry.

4 As way of background, it should be important for you
5 gentlemen to understand that of all the ethanol produced in
6 California, it is all produced from plants who manufacture it
7 from industrial and agricultural processing waste streams.
8 Literally, these plants in California are turning waste into
9 energy.

10 The danger is, because of some regulations that were
11 adopted -- proposed by staff and adopted by the Board, that
12 artificial caps have been placed upon the amount of ethanol that
13 can be blended with reformulated gasolines.

14 We feel that these caps or limits were placed in
15 contravention to and against the will of the Legislature, because
16 in 1991, SB 1166 was passed by this body and signed into law.
17 And what that did, that bill was negotiated between the ethanol
18 industry and the then-Chairperson of the Air Resources Board, Jan
19 Sharpless, and with staff. The negotiation was how to find a
20 role to continue to allow ethanol to be blended, but not knowing
21 what the precise formula for gasoline would be in 1996. In order
22 to encourage that plants be built in this state, we had to remove
23 the uncertainty and allow ethanol to continue to be blended
24 unless or until those blends were determined on the basis of
25 verifiable tests that they were not -- that they did not meet the
26 standards of Phase II California gasolines.

27 This bill was signed into law and became effective
28 January 1, 1992.

1 The problem is, is that immediately thereafter, staff
2 recommended, and the Board adopted, this cap. Basically gutting
3 1166 and making it impossible for ethanol to be blended at the 10
4 percent blend level.

5 Our concern was -- is that neither has there been a
6 standard set for ethanol blends, nor have the tests been
7 conducted. My concern was then that the Air Resources Board
8 should follow out the intent of this legislation.

9 I've discussed this with Mr. Dunlap. He has assured me
10 that these tests would be conducted, and he's assured me that a
11 role will be found for ethanol in Phase II. That there will be a
12 solving a one-month problem, which is the phase-in and phase-out
13 problem, in October.

14 And on that basis, then, I would ask for his confirmation.

15 I do want to raise one additional issue, however, and that
16 is that it has become apparent to me on the basis of court
17 filings that there has been undue influence by the oil companies
18 in establishing the air policy of the State of California.

19 I have filed a lawsuit against ARB and against Cal EPA,
20 alleging that they have violated the Bagley-Keene Open Meeting
21 Act, and that they have broken the law as it relates to the
22 California Public Records Act.

23 These allegations were denied. They were called ludicrous
24 and blatantly false, but I can tell you now that they have
25 finally been forced to acknowledge the fact that, yes, the oil
26 companies in fact were deeply involved and largely wrote an
27 affidavit that was submitted with the U.S. Court of Appeals,
28 overturning a federal renewable oxygenate rule.

1 I raise to the Committee's level so that you'll be aware
2 that this was not something that was done on Mr. Dunlap's watch.
3 I'm not accusing Mr. Dunlap of having been involved in this.

4 But I raise this up to a level of awareness so that he can
5 be aware that there have been problems in the past, and I ask
6 that in his administration of this agency, that he do everything
7 possible to make certain that the staff, which has been more or
8 less like a run-away train, that they in fact do not get too
9 close to the people who they're supposed to regulate.

10 And Mr. Dunlap, on the basis on the assurances he's given
11 me, he will not allow that to happen. I know that he will
12 exercise the leadership, and I urge you to confirm him on that
13 basis.

14 Thank you very much.

15 SENATOR BEVERLY: Thank you. Any questions of the
16 witness?

17 Anybody further in support? Come forward.

18 MR. KOEHLER: Neil Koehler, Director of California
19 Renewable Fuels Council and also a partner in Parallel Products,
20 an ethanol production company in the state, which as Mr. Vind
21 just described, we're one of those companies that's converting a
22 variety of food and beverage waste streams into ethanol and other
23 value-added products in Rancho Cucumonga.

24 I am here to support the confirmation of John Dunlap and
25 also to augment a little bit of what the last witness said,
26 because I have been, as a producer, have felt somewhat victim to
27 the regulations of the State Air Board that have been very
28 detrimental to our business, which we feel is a business that is

1 providing significant environmental benefits, both in air quality
2 and waste mitigation, to the State of California.

3 We worked very hard in 1991, developing a legislative
4 framework that was negotiated with interested stakeholders at the
5 time. It was supported by Democrats and Republicans, signed by
6 Governor Deukmejian, and also supported by the Air Board, to
7 provide a market role, market access, to ethanol blends in
8 California's reformulated gasoline program.

9 And the Phase II regulations, as they were adopted,
10 essentially locked us out of that program, particularly in the
11 summer months, and there are some issues in the winter months
12 that are also providing significant problems to our access to the
13 market.

14 All we've asked for is a performance-based role in Phase
15 II gasoline, and have been very impressed with Mr. Dunlap's
16 interest in trying to understand our issues. We've had a number
17 of meetings. He's toured an ethanol plant. The access has been
18 very good, but at this point, the significant problems still
19 remain, and I'm here because I have full faith in the integrity
20 of his leadership to help us deal effectively with trying to
21 resolve what still is a very serious problem in the State of
22 California.

23 Thank you.

24 SENATOR BEVERLY: Thank you, sir. Any questions?

25 Anybody else in support? Is there any opposition present?

26 The record will also reveal that no opposition was
27 received by the Rules staff.

28 Now the Chairman wanted to be here. Let's take a ten-

1 minute break; recess for ten minutes.

2 [Thereupon a brief recess was taken.]

3 CHAIRMAN LOCKYER: We will get going again.

4 I apologize for missing witness comments. I've had it
5 summarized for me.

6 I guess one we haven't heard from yet is Senator Calderon.

7 SENATOR CALDERON: Thank you.

8 Mr. Chairman and Members, I apologize for not being able
9 to be here when the Committee first took up this matter, as I was
10 detained in the State Assembly, that black hole.

11 What I wanted to do, however, was at least to provide some
12 insight into John. I met him when he used to work for the South
13 Coast Air Quality Management District, and I know him from his
14 work there as being fair, even-handed, and balanced. And of
15 course, that's always my preference, is to start in the middle.

16 CHAIRMAN LOCKYER: That means he agreed with you?

17 SENATOR CALDERON: That means on balance, he agreed with
18 me more often than not.

19 There was -- I worked with him when he was Deputy Director
20 for the Department of Toxics. There were numerous examples of
21 where I think he demonstrated his leadership ability as well as
22 his even-handedness. One in particular related to legislation
23 that I had enacted. It condensed five hazardous waste regulatory
24 programs into one.

25 There was occurring a statewide meeting to get input from
26 all the various regulated community as well as those regulators
27 at the local level in terms of how the program would work. And I
28 was contacted by a number of fire chiefs in my district and fire

1 chiefs across the state. They came into me on that very day and
2 said, "We're not being provided access, and we're the ones that
3 regulate most of the entities in these programs."

4 And so, it was necessary to give them immediate input, and
5 I called John, who had the responsibility for this statewide
6 conference. And he plugged them in.

7 I called him up; I told him what the problem was. I had
8 to leave. I wasn't even there for follow-up.

9 He plugged them in, much to their satisfaction; avoided,
10 maybe, a legislative fight that would have resulted because of
11 their feeling of lack of participation.

12 So, I think this is just one example of the type of
13 leadership that I respect, and the type of leadership that we
14 need. It's decisive and responsive.

15 So, I would recommend John highly, even if he is younger
16 than I am.

17 [Laughter.]

18 SENATOR CALDERON: And even if he does have a little more
19 hair than I do.

20 But certainly, he has earned those two or three gray ones
21 that I see here, and he will earn a lot more if he is confirmed.

22 I recommend him highly.

23 So thank you, Mr. Chairman and Members, for allowing me to
24 be here and at least share that with you.

25 Thank you.

26 CHAIRMAN LOCKYER: Thank you.

27 Mr. Dunlap, I know you did start with at least a brief
28 opening statement, and I've heard about that. Perhaps now I

1 could ask Members, Senator Ayala.

2 SENATOR AYALA: Mr. Chairman, I have a question for Mr.
3 Dunlap.

4 I shared with you an opinion from our Counsel simply
5 because I was concerned that how can government tell private
6 enterprise what they're going to grow, what they're going to
7 manufacture. You give them the standards, and if they don't meet
8 those, well, they just don't sell those cars.

9 But to tell them they're going to convert certain sales to
10 electric cars, for instance, over a period of time, to me it's
11 anti-American. It's not the free enterprise system that we are
12 accustomed to seeing in this country at all.

13 And for that reason, I wrote to the Counsel, asking to
14 give me his opinion, and I gave you a copy of the thing. I'd
15 like to read it for the record, however, what it says in
16 conclusion. It says, and this is the Counsel's Office:

17 "... we think that the state board has
18 exceeded its statutory authority in
19 adopting note (9)d of footnote (9) since
20 that regulation is inconsistent with
21 Section 43211 insofar as the regulation
22 would make a violation of the footnote
23 (9) regulatory requirement to produce and
24 deliver a prescribed percentage of ZEVs
25 subject to the civil penalty prescribed
26 by Section 43211."

27 And here's the conclusion of the Counsel saying:

28 "Accordingly, it is our opinion that a

1 manufacturer would not be subject to the
2 civil penalty prescribed in Section
3 43211 of the Health and Safety Code for
4 a failure to produce and deliver a
5 prescribed percentage of zero-emission
6 vehicles for sale in this state pursuant
7 to the regulations adopted by the State
8 Air Resources Board that are set forth
9 in note (9)d of footnote (9) of
10 paragraph (2) of subdivision (g)"

11 and so forth and so forth.

12 I guess he says that you have exceeded the authority in
13 coming forth with that type of a plan, which I agree with
14 Counsel, by the way.

15 Do you have an answer to that? What do you intend to do
16 about it?

17 MR. DUNLAP: Sure. I met with my legal counsel
18 immediately after you contacted me and found out that the Office
19 of Administrative Law agreed with us that that component was
20 enforceable of the clean car requirements. And my legal counsel
21 happens to be here with me who could expand upon that if he
22 needed to but --

23 SENATOR AYALA: He disagreed with our Counsel?

24 MR. DUNLAP: Right, our counsel says it's enforceable as
25 does the Office of Administrative Law.

26 SENATOR AYALA: I suppose the next action is, it would
27 take some legislation to stop you folks from doing that; is that
28 correct?

1 MR. DUNLAP: I would hope that wouldn't occur, but that's
2 possible.

3 SENATOR AYALA: Well, if our Counsel says it's illegal --

4 MR. DUNLAP: Our counsel met with the counsel you cited,
5 and I guess there's been some movement. There's been at least
6 some agreement that they'll disagree at this juncture, but they
7 did understand more completely the clean air argument for this
8 program.

9 SENATOR AYALA: So you're saying that our Counsel has back
10 peddled a little bit and has agreed with your counsel?

11 MR. DUNLAP: I believe he's on the way toward agreement
12 with our counsel.

13 [Laughter.]

14 MR. DUNLAP: I don't know if there's closure yet.

15 CHAIRMAN LOCKYER: This highlights an old principle: four
16 lawyers; at least seven opinions.

17 [Laughter.]

18 SENATOR AYALA: I guess what I'm asking you is, you don't
19 intend to do anything about it?

20 MR. DUNLAP: Well, it is enforceable. We believe that it
21 is a legally defensible argument and would prevail, if we needed
22 to enforce it.

23 SENATOR AYALA: You have the legal right to tell a
24 manufacturer how many of what he's going to produce?

25 MR. DUNLAP: We believe that that is enforceable.

26 SENATOR AYALA: Why don't we set the standards, and say if
27 they don't meet the standards, you just can't sell them in our
28 state, instead of saying there's going to be so many electrical

1 things, so many other things.

2 MR. DUNLAP: It's not a sales mandate.

3 SENATOR AYALA: It's what?

4 MR. DUNLAP: We don't require them to sell them. It's to
5 offer them for sale.

6 SENATOR AYALA: He claims in the other parts of the letter
7 that it's not enforceable and that it's going to be voluntarily
8 by those people who want to come in and join, but you can't
9 enforce it.

10 MR. DUNLAP: We have some disagreement that that is
11 enforceable. It's legally forcible.

12 SENATOR AYALA: Okay, we'll go from there, then. Thank
13 you.

14 CHAIRMAN LOCKYER: I know Senator Kopp and Hayden, I
15 think, are going to be here, and they'll probably want to ask
16 questions about this policy area, unless Senator Petris, did you
17 have something?

18 SENATOR PETRIS: I had other areas, but I'm interested in
19 that one, too.

20 I wasn't familiar with this Legislative Counsel's opinion
21 and I need to study it.

22 As one who's been involved in this field, or was, for a
23 long time, I would think that the police powers would prevail
24 under the general health and welfare of the people.

25 The reason we started legislation in air pollution control
26 was because it was the fastest rising health menace in this
27 state. Senior citizens were dying in unprecedented numbers,
28 particularly in the L.A. Basin. It got so bad that they could

1 predict that, given a certain condition in the L.A. Basin,
2 consisting of the temperature and the amount of wind, and whether
3 it got locked in that basin or had a chance to be blown away into
4 the sea, they could predict how many deaths there would be for
5 people who had heart trouble. Their blood was poisoned by the
6 air, and they would die from it. Anyway, it was a very bad
7 health menace.

8 So, if we go back to that beginning and remember how bad
9 it was, I think there's ample justification for various kinds of
10 legislation, including even limiting production or whatever, at
11 least for a certain period of time, see if it works out.

12 None of us is joyful about telling a manufacturer, you
13 know, I have to agree with the basic principle that Senator Ayala
14 has enunciated, but there's always that underlying health
15 problem.

16 We had children -- this is just history. I want to remind
17 people, and a lot of people here probably aren't familiar with
18 it.

19 In the Los Angeles Basin, during the worst smog years that
20 led to legislation, they couldn't find one child who had gone to
21 school in that basin for a given number of months who did not
22 already have objective, measurable, signs of lung damage. Those
23 aren't guesses; they're not speculation. They tested the lungs.
24 They couldn't find one child in the whole district who had been
25 there a certain period of time. I don't know whether that was a
26 year or two years, or five, whatever it was, whatever standard
27 they chose, it was shocking.

28 And that study resulted in a lot of legislation being

1 introduced, a lot more than we had had before.

2 So what I'm trying to say is that conditions were really
3 so bad that we had to find some pretty strong measures to try to
4 clean up the air and keep it clean, and that impacted some
5 people. It wasn't only the automobile people. The stationary
6 smog sources were hit pretty hard, too, with those very expensive
7 -- I forget what they call them now -- scrapers, or something.

8 MR. DUNLAP: Scrubbers.

9 SENATOR PETRIS: Scrubbers, they had to put them on their
10 smokestacks.

11 We had that in our area, too, but it wasn't as bad as in
12 some other parts of the state.

13 Now, I'd like to ask you on a couple other areas.
14 Regarding the ethanol question, your predecessor, in the hearings
15 for confirmation on this ethanol question, said that there was a
16 problem of going to ethanol and supporting it and approving it,
17 and so forth, because Cal EPA heard from the feds, I guess it was
18 -- I don't remember who got into the act -- but they said that if
19 we use the ethanol blended gasoline, it would result in
20 irreparable injury to the health and welfare of California
21 citizens, and actually exacerbate the problem in L.A. and San
22 Diego.

23 Well, a lot of the experts didn't believe that at all.
24 They thought it would be an improvement.

25 So, your predecessor said, "We're not going to allow it."

26 I don't know what the current status is, but I don't think
27 there's any statutory authority for saying that you can't use a
28 blend. Is the blend being used now?

1 MR. DUNLAP: It's used as an oxygenate now by several
2 refiners.

3 Senator, what I have done, and you heard from some of the
4 earlier witnesses, is sit down and meet with the ethanol
5 interests in our state. We've had a series of ongoing meetings.
6 We've made some favorable administrative rulings for them. We've
7 agreed, I've agreed, to do a study that more fully examines the
8 air quality impact of ethanol as an oxygenate at higher levels.
9 We're examining that.

10 Also, we are fuel neutral, and we'll adhere to that
11 policy. And I would like nothing better than to work with this
12 industry.

13 But any changes we would make administratively or
14 regulatorily would have to make sense for air quality. So,
15 that's what we're going to do. We're going to look at the
16 science and make sure that any changes will actually help air
17 quality and not hurt it.

18 SENATOR PETRIS: If your policy is fuel neutral, how does
19 that affect ethanol? Does that mean go ahead and do it?

20 MR. DUNLAP: It means we would do -- continue to do an
21 examination of the impact of ethanol, for example, as an
22 oxygenate. And if there isn't an increase, there are other
23 competitive oxygenates on the market that could be added to
24 gasoline. And if ethanol proves to be at higher levels
25 nonharmful and nonimpactful to air quality, then we would be
26 willing to allow it to be blended at higher levels.

27 If it doesn't make sense for air quality, then we would
28 have some problems with that.

1 SENATOR PETRIS: When will you know?

2 MR. DUNLAP: Well, we're right now talking to them about
3 any existing gaps in the data and about this study that Mr. Vind
4 and Mr. Koehler mentioned.

5 So, we're going to have meetings. We're going to continue
6 to meet with them and follow up.

7 SENATOR PETRIS: Is that study continuing now?

8 MR. DUNLAP: They're talking about, I guess, a new study,
9 a more complete study.

10 SENATOR PETRIS: So you're waiting to see what that shows?

11 MR. DUNLAP: We're talking with them now about that.

12 There are models. There's a federal model and there's a
13 state model: a complex model at the federal level, a predictive
14 model at the state level. There's some variations there in the
15 variables that are inputted.

16 Input, we're examining those predictive models'
17 capabilities.

18 SENATOR PETRIS: Well, we went through this before. I
19 guess your current studies might be more comprehensive, but we
20 have a section of the Health and Safety Code that encourages
21 mixing ethanol into gasoline because of the prior study. That's
22 our official policy right now; isn't it?

23 MR. DUNLAP: We allow ethanol as an oxygenate at present,
24 yes.

25 There are several issues. One is in allowing it at a
26 higher level, and what the air quality impact will be as a
27 result.

28 There was also a federal position that U.S. EPA took that

1 has been questioned in the courts as well and environmental
2 community. The support for that was taken away by the
3 Washington, D.C. Appeals Court, supported by several of the
4 environmentalists, environmental groups in our state. And that's
5 one of the issues that's in contention right now as well, whether
6 or not we would overlook that in California.

7 SENATOR PETRIS: In the meantime, what happens with our
8 present law?

9 According to my information, we have Health and Safety
10 Codes, Section 43830, which says -- which actually encourages the
11 blending of ethanol into the ordinary fuel unless there's some
12 independent verifiable studies that prove it's a health problem.

13 MR. DUNLAP: Right.

14 SENATOR PETRIS: So as of now, we're officially --

15 MR. DUNLAP: As of now, it can be used as a blend, right
16 now, as an oxygenate blended into the fuel, yes.

17 What is at issue is, they want to be able to increase the
18 amount that they blend into gasoline. And some of the analyses
19 show, Senator, that it will have a harmful air quality impact if
20 you increase the percentage in the fuel. And that's what we want
21 to try to get answered.

22 SENATOR PETRIS: So the current issue is the proportion,
23 not whether you do it or not?

24 MR. DUNLAP: Correct.

25 Let me assure you, we'll continue to meet. We'll talk
26 about these technical issues and try to get them resolved.

27 SENATOR PETRIS: One of the complaints from the ethanol
28 people, I think, is that they lose a certain share of the market.

1 I don't understand that, how that works.

2 Can you tell us about that?

3 MR. DUNLAP: Well, as I understand it, the refiners have
4 some options as far as what oxygenate they use. Most of them do
5 not use ethanol. They use MTBE or ETBE, or CTBE as a derivative.

6 But I understand that they're looking at increased market
7 share. I mean, they would like some regulatory assistance to be
8 able to do that with some favorable regulatory decisions.

9 SENATOR PETRIS: To get back to electric vehicle that we
10 were talking about earlier, I've had an interest in that also. I
11 carried electric car bills a long time ago without success. We
12 would have exceeded this goal by a whole lot back in the '60s.

13 Sorry to keep sounding like an old man, but when you get
14 to be old, that's what you do. You talk about the past.

15 [Laughter.]

16 SENATOR PETRIS: On that note, I used -- it has nothing to
17 do with pollution -- but I used to carry, as a freshman, I
18 carried a lot of bills relating to the elderly, because they were
19 kind of being ignored. And people asked me, "Why do you carry so
20 many bills for the elderly?" I said, "I hope to be an elderly
21 person some day." Here I am.

22 Now, on this electric vehicle thing and the percentage,
23 and so forth, the industry has really been working hard to
24 undermine that with advertising campaign and so forth. And the
25 administration has now said that they're looking for some kind of
26 alternatives to the zero emission thing.

27 The Governor originally came out with a very strong
28 policy, it seemed to me. But now, in the latest, there's a

1 newspaper article here just recently that shows he seems to be
2 backing off of that this year, in May, the end of May.

3 Are you familiar with what his current policy is?

4 MR. DUNLAP: The administration has not backed off the
5 clean car requirements.

6 What we have done earlier this year, shortly after I was
7 appointed there was an awful lot of discussion by some opponents
8 of this program about there should be a rollback or a delay.

9 This program was adopted -- it might be helpful if I give
10 you a bit of history. It was adopted in 1990. There has been a
11 continuous review. We've had serious biannual reviews where
12 there've been hearings where we've discussed the development of
13 this program. It's not just the Zero Emission Vehicles. We have
14 Low Emission Vehicles, and Ultra-Low Emission Vehicles also in
15 the mix.

16 There has been essentially a continuous review since 1990,
17 where we've had these meetings, these hearings, to discuss: how
18 the technology is going; are we going to get an advanced battery;
19 what does the marketplace look like; what kind of bells and
20 whistles will the vehicle need to be acceptable to consumers.

21 And in the first quarter of this year, I set up nine
22 public forums where we could talk about those very issues, which
23 we're about halfway through them now. We've allowed the
24 stakeholders, those auto manufacturers, the seven that are
25 subject to the Zero Emission Vehicle Program, to come in and
26 present us information about the technology, battery technology,
27 what they're finding out from consumer surveys, whether or not
28 hybrid vehicles could be created to be added into the mix, also

1 infrastructure issues.

2 So, we're doing a rigorous review. I've had -- at each of
3 these forums which we've had in Southern California, I've had
4 four of my Board members at each one that have rotated so that
5 each one would be educated as to the issues surrounding the
6 vehicle. And so, we're continuing to do that.

7 The ZEV Program is an integral part of our state clean air
8 plan, our SIP, the State Implementation Plan, and we need those
9 emissions reductions from the mobile source sector. So, we need
10 to get those tons reduced.

11 So, I'm not supportive, nor are my colleagues on the
12 Board, in shifting the burden for those emissions reductions,
13 say, from the motor vehicle fleet to stationary sources. Those
14 are motor vehicle emissions we need to reduce, and we're
15 committed to getting those reduced.

16 We want it to work.

17 SENATOR PETRIS: What is your impression of the genuine
18 efforts of the automobiles manufacturers? Are they really trying
19 hard to get the technology that's needed to accomplish that goal?

20 MR. DUNLAP: Some are. I've had face-to-face meetings
21 with four of the seven manufacturers and their progress varies,
22 depending upon which one you're talking about.

23 There's been some battery consortia that have been set up
24 using some federal research dollars and some private dollars from
25 them. We're monitoring that very carefully. We have one of our
26 best technical people serving on their committees.

27 We're very serious about getting the answers. Again, we
28 want this program to work. I want to bring forward the vehicle,

1 but we want it to work and we want people to want to buy it.
2 It's the very issue that Senator Ayala brought it, you know, will
3 people buy it if it's out there.

4 So, we're serious about it.

5 SENATOR PETRIS: Some of the people who are doing the
6 undermining campaign are from the automobile industry, some are
7 from the oil industry. And I can understand that. They don't
8 want it to change, you know. Most of us don't like to change
9 something we've been doing for a long time.

10 But again, the basic question is really the health of the
11 people.

12 So, your role is to encourage them to get together, and
13 you're meeting with them regularly?

14 MR. DUNLAP: We've met regularly. These forums have
15 really helped. We've almost had a packed house, 150-plus people
16 at each one of these forums where we have people come in and tell
17 us what's going on.

18 We've had some pretty good cooperation from some of the
19 auto makers as well. I don't want to say that they're not
20 cooperating, they're not working with us. Most of them are.

21 SENATOR PETRIS: Now, have you run into any problems with
22 this new wave of deregulation? Do you meet government people,
23 like say in the Congress, going the other way and saying, "We
24 don't want you screwing around with this. There's too many
25 regulations."

26 MR. DUNLAP: We've -- the administration, and from my time
27 at the Department of Toxics, the message that we've received and
28 tried to impart in the administration is that the standards are

1 important and necessary to protect the public health, as you've
2 pointed out. It's how the standards are implemented where really
3 reform or change need to occur. And so, we devote a lot of time.

4 For example, one of the things I'm most proud of in my
5 brief tenure at the Board is, I brought on an ombudsman, somebody
6 to actually work with the business community, particularly the
7 small businesses, to find out what problems people are having
8 with complying with some of the air quality rules.

9 So, we're really looking at how those programs are
10 implemented; whether or not we can de-mystify the regulatory
11 process, help people to comply, and get the most environmental
12 improvement we can at the least cost.

13 But there is no movement to short-circuit the standards.

14 SENATOR PETRIS: So, I take it they're acknowledging that
15 it can be done, it's just a matter of find that technology,
16 working on that. Is that the general attitude?

17 MR. DUNLAP: It can be done. It's the time and the cost,
18 and whether or not we get an advance battery in 1998 or not.

19 SENATOR PETRIS: Well, I think that's a big improvement
20 over my time. When I was doing it, their answer was, "It's
21 impossible." And I promptly labeled them as subversive
22 unAmericans.

23 There ain't nothing we can't do if we put our mind to it.

24 MR. DUNLAP: Right.

25 It's an exciting technology. I've driven most of the Zero
26 Emission Vehicles on the market, and their performance in most
27 cases is quite acceptable.

28 SENATOR PETRIS: There's another area I've been active in

1 and I'm still interested in, and that's the air pollution we get
2 from pesticides. Some of it, we used to think of it on the farm.
3 Of course, that's where most of it is, but we have a lot of it in
4 other places, too. We have it in our schools; the stuff they use
5 to clean the floors during the summer vacation. The kids come
6 back, and it's -- and they also use it in their garden and so
7 forth.

8 How much of a problem does pesticide use represent in the
9 total picture of air pollution?

10 MR. DUNLAP: We brought forward a comprehensive State
11 Implementation Plan last November, and it has a pesticides
12 component. And we're calling for a 20 percent reduction in
13 volatile organic compounds from pesticides in California.

14 It's essentially a voluntary effort. If we don't see the
15 progress made through reformulation and the like by 1997, we have
16 the ability to mandate some specific changes. And we're
17 optimistic that we'll be able to achieve those reductions.

18 The pesticide manufacturers are doing their part and are
19 an active part of our clean air plan for California.

20 SENATOR PETRIS: You're actually involving your agency in
21 that part of pollution as well.

22 MR. DUNLAP: Correct, in cooperation with our sister
23 agency, the Department of Pesticide Regulation.

24 SENATOR PETRIS: Well, there were prior Directors who just
25 said that's not our jurisdiction and it should be the Pesticide
26 Regulation people.

27 I'm glad to see you both working on it. I think we need
28 all the help we can get there.

1 Now, you mentioned the STIP?

2 MR. DUNLAP: The SIP.

3 SENATOR PETRIS: Is there a STIP also?

4 MR. DUNLAP: It's the State Transportation Plan.

5 SENATOR PETRIS: I think there's a SLIP here somewhere.

6 [Laughter.]

7 SENATOR PETRIS: Well, it says here that:

8 "The STIP requires an 80 percent
9 reduction in VOCs from consumer
10 pesticides, while agricultural pesticides
11 are asked voluntarily to reduce it by 30
12 percent."

13 It doesn't make sense.

14 MR. DUNLAP: I'm not familiar with that 85 percent number
15 offhand. I'll have to look into that.

16 We have been -- it may mean consumer products. We
17 actively regulate --

18 SENATOR PETRIS: Oh, yes, consumer products.

19 MR. DUNLAP: -- consumer products.

20 SENATOR PETRIS: That's what we're talking about. And the
21 question is, why do we have a mandate for one part of it and a
22 voluntary program for the other part? I think that's a good
23 question.

24 MR. DUNLAP: I wasn't Chair when the plan was brought
25 forward, but I can get back to you on that. I'd be happy to.

26 SENATOR PETRIS: I would appreciate it. There may be a
27 lot of room for improvement there.

28 MR. DUNLAP: Sure.

1 Senator, I must tell you that that plan shows that we will
2 have -- it's the first time we were able to plan for attainment
3 of the ozone standard in California, the first time. So, it's a
4 very aggressive plan, a comprehensive plan.

5 I don't know how much more can be squeezed out of each of
6 those sources, but I'll certainly look into that for you.

7 SENATOR PETRIS: Now, are you working on alternative
8 fuels, or is that totally under the ARB? I mean, are you working
9 on alternative fuels with others, or just your agency?

10 MR. DUNLAP: We set -- remember, I mentioned the clean car
11 requirements. We've set certain standards at which vehicles --
12 vehicle manufacturers can certify their product at a certain
13 emissions level, and that does involve the use of alternative
14 fuels.

15 And we do work closely with the Energy Commission and have
16 for many years.

17 SENATOR PETRIS: So you've developed testing with them,
18 and you compare notes?

19 MR. DUNLAP: Correct. Remember I mentioned fuel
20 neutrality?

21 SENATOR PETRIS: Yes.

22 MR. DUNLAP: We want to see emissions standards met from
23 tail pipe emissions, for example, and we don't care what fuel is
24 used, as long as that --

25 SENATOR PETRIS: As long as the standard is met.

26 MR. DUNLAP: Correct.

27 SENATOR PETRIS: Now, on reformulated gasoline, is that
28 part of it?

1 MR. DUNLAP: Right. Next year in June, we're bringing
2 forward car Phase II gasoline, which will be 11-17 percent
3 cleaner for criteria air pollutants, and 40 percent cleaner for
4 air toxics. Very important program for us.

5 SENATOR PETRIS: Are you getting cooperation on that one?

6 MR. DUNLAP: Getting good cooperation. We've worked very
7 closely with the oil industry in this case to ensure that there's
8 no problem with supply, or performance, or that, you know, we
9 short-change publicizing the program.

10 It's been a good program. It's one that the oil industry
11 spent, I think, between \$5-6 billion to be able to produce this
12 fuel, so it's important that we work well with them.

13 SENATOR PETRIS: At some prior hearings, we went into this
14 fight between the oil refiners in California suing the EPA, and
15 they were joined in by our Commissioner, whatever his name was;
16 his title was Secretary, Mr. Strock.

17 Is that still happening?

18 MR. DUNLAP: I don't know what case that is.

19 SENATOR PETRIS: Well, it was reported to us that he had
20 joined the oil refiners in suing the federal government over
21 regulations.

22 MR. DUNLAP: That may have been in this ethanol issue
23 that's been discussed today. But it wasn't -- we weren't -- I
24 don't believe Secretary Strock was party in the lawsuit. I think
25 he might have filed a position paper or some information.

26 SENATOR PETRIS: Do you meet with the Governor on these
27 policies?

28 MR. DUNLAP: Yes, I have access.

1 SENATOR PETRIS: On Earth Day, he gave a message on this
2 subject in speaking to a conference of the oil industry. And he
3 said he would review the mandatory ZEV program.

4 Which direction was he inclined to go? Do you know what's
5 happened since?

6 MR. DUNLAP: The Governor's communicated to me that
7 achieving the clean air goals in the State Implementation Plan is
8 our highest priority, and that my marching orders, if you will,
9 is to see that we achieve those emissions reductions on schedule.

10 And I mentioned that the Zero Emission Vehicles Program is
11 a component part of that plan, so we need those emissions
12 reductions.

13 SENATOR PETRIS: In spite of reports, maybe they're just
14 rumors that we hear from time to time, he hasn't retreated from
15 that?

16 MR. DUNLAP: The standards, and the goals, and the timing
17 are important. And we've been instructed to hit those goals and
18 targets.

19 SENATOR PETRIS: Well, there's a few other areas, but I
20 don't think we have that much time.

21 CHAIRMAN LOCKYER: By whom were you instructed to hit
22 those targets?

23 MR. DUNLAP: We had, when there was a lot of press
24 accounts about the Zero Emission Vehicles, the Governor had sent
25 a letter that was made public to me, as Chairman of the Air
26 Resources Board, that talked about being very deliberate in our
27 evaluation of clean air technology, and making sure that we
28 didn't give any ground to, you know, to delay, or any of those --

1 on any of those programs, to make sure that we hit the attainment
2 dates -- which, I think, in our state is 2010 for attainment of
3 the ozone standard.

4 So, when people talk about retreating or changing the
5 clean air programs, I think many of them may be missing the
6 point, that we have a very refined, a very mature emissions
7 inventory. We know where air pollution comes from, and we've
8 targeted a source to get reduction. There's only so many ways to
9 get those reductions.

10 So, we haven't been instructed to back away with any part
11 of our State Implementation Plan.

12 CHAIRMAN LOCKYER: Do you feel reasonably confident in
13 being able to stay on schedule?

14 MR. DUNLAP: It is my hope that there won't be any
15 technology barriers, or anything that gets in the way of
16 attaining those clean air goals.

17 CHAIRMAN LOCKYER: Would it be technology? Would that be
18 the determining factor?

19 MR. DUNLAP: Yes. Scientific evaluation is important to
20 bring on line any of these new program, particularly where we're
21 forcing technology, as we are in the case of the Zero Emission
22 Vehicles.

23 CHAIRMAN LOCKYER: Is this battery technology?

24 MR. DUNLAP: It's battery technology primarily.

25 CHAIRMAN LOCKYER: Tell us the latest on that, if you
26 know.

27 MR. DUNLAP: Well, we are set within the next week to
28 announce that we've pulled together -- I don't like the term "a

1 blue-ribbon panel" -- but a panel of battery experts that are
2 going to go out and do essentially an extensive audit of the
3 seven auto makers subject to the Zero Emission Vehicles Program
4 to determine the progress they've made on developing an advanced
5 battery, and ask a number of questions. Among them, what are the
6 most promising batteries on the horizon; what are their costs;
7 what's likely to be the production capabilities, and the like.

8 So, that will give us those answers, and that'll be, as I
9 mentioned to Senator Petris, that'll be part of that process to
10 find out and get answers about the status of the technology.

11 CHAIRMAN LOCKYER: How would you envision using that
12 information once you have it?

13 MR. DUNLAP: It would be an input to the Board. Remember,
14 I mentioned this continuous review of that program? It'd be an
15 input. We'd want to examine it and look at it.

16 As I mentioned earlier, we want the tons. We want the
17 emissions reductions, and that's going to be our focus: get
18 those tons as quickly as possible.

19 CHAIRMAN LOCKYER: Would it be the absence of technology,
20 or consumer interest, or what would be the considerations that
21 would be used --

22 MR. DUNLAP: I think both of those items --

23 CHAIRMAN LOCKYER: -- shift strategy?

24 MR. DUNLAP: That would be speculative. I don't want to
25 speculate too much.

26 I've been impressed with some of the progress made on my
27 visit. I visited Detroit and met with the Big Three.

28 For example, the General Motors Impact is a fine vehicle.

1 Range seems to be adequate, probably would be adequate for most
2 drivers. Production cost is a significant factor. Someone said
3 that it's as high as \$350,000 for that car.

4 I don't have the expertise at this point, enough
5 knowledge, to tell you if that's true or not. But there are some
6 considerations about production costs.

7 Plus, think about it, if these vehicles are made available
8 at a very high cost, could we get the penetration that Senator
9 Ayala mentioned? Would people be able to afford a \$60,000 two-
10 seater electric car? It'd be difficult.

11 So that's why it's more of a collaborative approach rather
12 than kind of a raw --

13 CHAIRMAN LOCKYER: If it ever gets to be a fad, it'll be
14 in California.

15 MR. DUNLAP: If it's a clean air fad, we'd welcome it.

16 SENATOR PETRIS: I would direct the attention of your
17 experts to England. Right at the height of my work on air
18 pollution in the middle '60s, I happened to go to England, and I
19 saw all kinds of electric vehicles: from the milk delivery truck
20 that went house-to-house dropping off the bottles, to enormous
21 cranes, you know, huge trucks with big, powerful cranes, and
22 everything in-between. And they were all electric operated.

23 I don't know if they developed a particular battery that
24 we haven't been able to come up with or what. I guess you have
25 all the literature on that. --

26 MR. DUNLAP: Right.

27 SENATOR PETRIS: -- in your shop.

28 MR. DUNLAP: I can't speak to the specifics in Great

1 Britain, but I know that our -- that we have very fine technical
2 people that are monitoring everything that's going on: reading
3 the literature, having --

4 SENATOR PETRIS: All over the world, I guess.

5 MR. DUNLAP: Yes, all over the world.

6 And this battery audit panel that we'll be announcing soon
7 will be able to do some traveling and get in and talk with the
8 Japanese and others, go to Europe and find out first-hand what's
9 going on.

10 CHAIRMAN LOCKYER: Is it not research that's excessively
11 proprietary, so that you're able to get --

12 MR. DUNLAP: We're going to be asking for some
13 consideration to let us see the books, and signing some
14 agreements to make sure we don't violate any of those provisions
15 of secrecy and whatnot.

16 CHAIRMAN LOCKYER: Senator Ayala.

17 SENATOR AYALA: I just want to clarify my position here.

18 I was born and I was reared and I still live in that most
19 polluted area in the country, and I would oppose any regulation
20 of statute that would put up that we shouldn't have.

21 But I have a problem with having a Counsel, and we're
22 paying him an awful lot of money, with a battery of 70 attorneys,
23 and we only listen to him when we want to agree with him or not.
24 I think when we don't agree with him, we don't listen to him.

25 So maybe here's a place we can save money by deleting
26 that, since we're not going to listen to them. We're going to
27 listen to the attorney of the air pollution district which is,
28 obviously, you know, a little bit biased.

1 So, what do we do? Ignore our Counsel when we want to,
2 and obey him when we don't want to? I don't understand that.

3 CHAIRMAN LOCKYER: I would only suggest, first of all,
4 you're right. We may be able to effectuate some savings in Leg.
5 Counsel. Keep focused on that.

6 Mr. Dunlap and everyone else in these positions has a duty
7 to obey the law. If he has a lawyer that works for him to say,
8 "Your duty is X," and there's a different lawyer somewhere else
9 that says, "No, your duty is Y," then the only way you resolve
10 that is, somebody decides to go to court.

11 SENATOR AYALA: But his attorney is not ours. This is our
12 attorney.

13 CHAIRMAN LOCKYER: That's right.

14 SENATOR AYALA: And we should listen to the gentleman.

15 CHAIRMAN LOCKYER: I understand that, but his attorney is
16 telling him what his duty is, and it's different.

17 SENATOR AYALA: It sure is, and I don't agree with that.

18 I think that we should listen to our attorney. That's
19 what we're paying him for. He's got his; he should listen to
20 him.

21 But we're the ones that are making the confirmation here
22 today, and not his attorney.

23 CHAIRMAN LOCKYER: But as it relates to Mr. Dunlap's
24 confirmation, he's doing the same thing you're urging or want to
25 do. That is, you're listening to your lawyer; he's listening to
26 his lawyer. Gee, big surprise.

27 SENATOR AYALA: It seems to me --

28 CHAIRMAN LOCKYER: Did you ever seen this movie, Other

1 People's Money? Danny DeVito.

2 [Laughter.]

3 CHAIRMAN LOCKYER: Good movie. I recommend it.

4 At one point, they're going to sue each other. And he
5 says, "You know, lawyers are a little like nuclear weapons.
6 Everyone wants one, but as soon as somebody uses it, it messes
7 everything up."

8 [Laughter.]

9 SENATOR AYALA: Let me ask Mr. Dunlap, do you ever
10 disagree with your attorney?

11 MR. DUNLAP: It's a rare occurrence, but there are
12 occasions.

13 SENATOR AYALA: I don't think you should. Otherwise, what
14 do you hire him for?

15 CHAIRMAN LOCKYER: But Senator, I would say our attorney
16 is not telling us to confirm or not confirm him. Our attorney is
17 giving us their best interpretation of the law. His attorney is
18 giving him an interpretation of the law.

19 SENATOR AYALA: But I agree with our attorney.

20 CHAIRMAN LOCKYER: That's fine, but what should he do?

21 SENATOR AYALA: Well, I think you should try to find out
22 how we can best address this issue, and not listen to his
23 attorney as much as the Counsel's attorney that we have, and
24 maybe work out something that we can work with.

25 I don't agree with what you're doing, by the way. I think
26 it's wrong, what you're doing.

27 CHAIRMAN LOCKYER: Now, that's a policy matter and a fair
28 thing to talk about.

1 SENATOR AYALA: When do we address that unless we do it
2 now?

3 CHAIRMAN LOCKYER: You can go. Hey, rip off his ear! Go
4 ahead.

5 [Laughter.]

6 CHAIRMAN LOCKYER: We'll call him the Van Gogh of Air
7 Pollution.

8 SENATOR AYALA: I think he's the best Chairman we ever
9 had. I have nothing personally against you. I think you're
10 doing a heck of a job.

11 I just feel that we only listen to our attorneys when we
12 want to, and when we don't want to listen to them, the heck with
13 it. What do we have them for if we're not doing to do that? It
14 doesn't make sense to me.

15 MR. DUNLAP: That's a good point.

16 Mr. Chairman, with your concurrence, I would be happy to
17 personally sit in with your counsel and with my counsel, and we
18 could try to get to the bottom of this.

19 And Senator, if you'd like, I'd be happy to come see you
20 about what I've determined.

21 CHAIRMAN LOCKYER: Sergeant, would you call Mr. Hallebrin,
22 Deputy Leg. Counsel. Tell him he's on t.v., to come by. Scott
23 Hallebrin.

24 You have your attorney present also?

25 MR. DUNLAP: Mr. Kenny is in the front row.

26 CHAIRMAN LOCKYER: Sorry, wrong name. We have a lot of
27 opinions here. Ben Dale. Mr. Hallebrin's off the hook. Mr.
28 Dale we'd like to stop by.

1 Senator, anything more on that? We'll get the lawyers
2 here, and you can be Supreme Court.

3 [Laughter.]

4 CHAIRMAN LOCKYER: Senator Lewis.

5 SENATOR LEWIS: My question might be somewhat premature
6 because you're getting ready to convene this special blue-ribbon
7 panel with regard to the ZEV vehicles. But since I believe you
8 said a while ago that you've had an opportunity to, perhaps, test
9 drive or inspect --

10 MR. DUNLAP: Sure.

11 SENATOR LEWIS: -- or whatever a number of them, I'm kind
12 of interested, you know, what is out there right now, today.
13 What's the best technology available at this point in time.

14 We can conjecture about the future, but we don't for sure.
15 And my bias is, I'm always a little bit worried about command and
16 control measures anyway, but I was wondering if you could just
17 kind of describe to me, of all the things that you've inspected
18 so far -- and I don't want you to endorse a particular brand or
19 something --

20 MR. DUNLAP: Right.

21 SENATOR LEWIS: -- but perhaps you can tell us a little
22 bit about the mileage capacity of what's out there; what the cost
23 of that particular vehicle is; how big it is. What are consumers
24 being asked to swallow?

25 MR. DUNLAP: Well, I can -- again, I don't have all the
26 answers. We're in the middle, as I mentioned to Senator Petris.
27 We're in the process of evaluating these things.

28 But I've driven -- I'll give two examples. I don't mind

1 mentioning the manufacturer's name. The General Motors Impact,
2 which the technology's been around since 1990. It's got a lead
3 acid battery. Range is in the neighborhood of 70 miles range
4 with a charge. It's performance is, I think, zero to 60 in
5 something like 8 seconds. It's quite an acceptable vehicle.

6 You will reduce your range by not paying attention to, you
7 know, your driving habits. If you're a lead-foot, you'll get
8 less.

9 SENATOR LEWIS: How long does it take to recharge that
10 battery?

11 MR. DUNLAP: There's -- it generally needs an overnight
12 charge. I can't give you exact hours, 8 to 10 hours to get a
13 full charge, and there's a quick charge that you can done by a
14 certain type of charging unit in a couple hours, I believe.

15 SENATOR LEWIS: Well, 60-70 miles for me would not be
16 sufficient. I'll tell you that.

17 MR. DUNLAP: There's been some studies that have been done
18 that show that the average family in a home only needs -- need
19 less than 50 miles on average. So, it's -- the vehicle's not
20 going to be right for everyone.

21 In 1998, you're only looking at two percent of the new
22 cars sold available for sale.

23 There's also a delivery van that's small, a small vehicle,
24 that Ford has. I think it's called the Echo Star. Would be
25 good. Senator mentioned delivery vehicles in Great Britain.
26 It'd be appropriate for that, maybe small packages and the like,
27 or flowers, or catering, or whatever.

28 There's some other prototype vehicles. There's a van that

1 Chrysler's bringing forward that will get -- will have a much
2 larger battery pack.

3 The problem with it right now, we don't have advanced
4 batteries ready to be mass produced today, as we understand it,
5 and these batteries will only last about two to three years. And
6 to replace them will be between \$5-10,000. A very -- the cost is
7 a significant barrier to this technology.

8 So again, we're in the process of finding out all we can.
9 We want to see this technology work, and we want it available.

10 SENATOR LEWIS: One of the problems, of course, is when
11 you're talking about the average consumer and you said the 50
12 mile figure, you know, it's probably an average figure, and maybe
13 on a particular day I might only need to drive 40 miles --

14 MR. DUNLAP: Right.

15 SENATOR LEWIS: -- but I'd hate to forego my opportunity
16 or need to drive 70 miles or 80 miles --

17 MR. DUNLAP: Right.

18 SENATOR LEWIS: -- every other day, or every third day, or
19 something like that.

20 MR. DUNLAP: That is a barrier. The battery is the key
21 element.

22 SENATOR PETRIS: When I was in grammar school, there was a
23 whole fleet of electric trucks in Oakland owned by the Railway
24 Express Agency. They picked up their cargo at the depot and
25 delivered it around town.

26 They used to have this whining sound, and it was a large
27 garage and a large fleet of trucks.

28 Maybe we can check the history books and see what they

1 used. At least they were functional and --

2 CHAIRMAN LOCKYER: Rats.

3 SENATOR PETRIS: -- could do the job. Yes, rats in the
4 wheel, could be.

5 CHAIRMAN LOCKYER: Senator Kopp, did you wish to pursue
6 any line of inquiry?

7 SENATOR KOPP: Thank you, Mr. Chairman, Members of the
8 Rules Committee. Thank you for providing me an opportunity as
9 quickly as possible to examine a couple of areas.

10 Also, I would begin by noting that one of the hallmarks of
11 the Transportation Committee often is healthy disagreement.

12 And I am pleased to learn that the ARB's lawyer is of the
13 opinion that that regulation is legal and binding on the
14 automobile manufacturers. Not that that is particularly relevant
15 here, as you point out, Mr. Chairman, but knowing that the
16 manufacturers have been trying now for at least two years to
17 change the statute and the regulations, I would expect that
18 somebody may be so bold as to introduce a bill to change that
19 statute.

20 Am I correct in inferring from your comments that you
21 would oppose any such legislation?

22 MR. DUNLAP: To take away our ability to bring forward the
23 ZEV Program?

24 SENATOR KOPP: Yes.

25 MR. DUNLAP: We'd want to see exactly what that
26 legislation looked like, but you know, I can't --

27 SENATOR KOPP: Well, I can tell you what it would be. I
28 can tell you it could take several forms.

1 CHAIRMAN LOCKYER: Let him answer the question.

2 SENATOR KOPP: I'm sorry.

3 MR. DUNLAP: I was going to say, I can't emphasize enough,
4 Senator, how important it is for us to get those emissions
5 reductions. And when people talk about doing away with this
6 program or that program, we need to be able to replace it with
7 something.

8 And so, let's take, for example, the ZEV Program for a
9 minute. If we were to do away with it, we need to make up some
10 emissions reductions from the mobile area. There aren't that
11 many options.

12 CHAIRMAN LOCKYER: How would you do it?

13 MR. DUNLAP: Well, it's difficult; it's difficult, and
14 it'd be speculative. We need to look at the technology, and also
15 there are a lot of people that are interested in what we might
16 do, what options might be available, and that kind of thing. And
17 we don't have those answers.

18 We want the program to work. We're committed to getting
19 those emissions reductions from that source if we can.

20 If we find out that the technology isn't there, or there's
21 some problems with consumer acceptability or cost, or whatever,
22 we need to know that.

23 And I haven't had a chance to say much about our Board.
24 We have an 11 member Board, of which I'm the Chair. We have some
25 subject matter experts there. We have a lawyer, automotive
26 engineer, somebody with some agriculture background, folks that
27 serve on local boards, air boards, in this state that have some
28 expertise. And I am one, an important part, I suppose, but one

1 member of that Board.

2 So, we want to look at these issues, and collaborate, and
3 discuss it, and see what exactly we can actually bring forward.

4 So, I don't want to speculate too much, Senator, if I can
5 avoid it.

6 SENATOR KOPP: Well, as I started to say, I can tell you
7 it'll take one form where legislation would require the ARB to
8 study the subject further. That's what you call setting it up.

9 Then for a repeal of that provision, another form might be
10 a modification so the 1998 becomes 2005 or 2006, and I guess
11 another form would be to repeal it.

12 But I want to be assured that your predilection is that
13 that statute can be complied with and should be complied with,
14 barring some clear and convincing evidence to the contrary.

15 Is that your position?

16 MR. DUNLAP: That's correct.

17 SENATOR KOPP: That's my position, too. And I know
18 there's probably been discussion about the subject of
19 independence.

20 I want you to be independent from me if you're confirmed,
21 but I also want reassurance, because in the field of
22 transportation, I read the statute. It talks about at least one
23 commission in that field which is established with an
24 independence, and often is hardly independent in terms of policy
25 positions.

26 But do you feel that you can be independent of the
27 appointing authority with respect to that ZEV issue and similar
28 issues?

1 MR. DUNLAP: Yes, I believe I've been appointed because of
2 my expertise and experience. We've been given a free hand to
3 evaluate this program. I haven't been ordered to change it or do
4 away with it, and we've been very deliberate in our evaluation up
5 to this point and we'll continue to do that.

6 And I commit that to you. And not just for myself, but
7 for my colleagues on the Board as well.

8 SENATOR KOPP: We spent in the Legislature the better part
9 of a year and a half on the subject of inspection and
10 maintenance, also referred to as I&M, and finally concluded an
11 agreement with the federal EPA.

12 Have you testified as to the status of the various
13 components of that settlement, including the bottom line of the
14 predicted decrease in emissions?

15 MR. DUNLAP: For I&M?

16 SENATOR KOPP: Yes.

17 MR. DUNLAP: I'm pleased to be able to say that that isn't
18 our program. We have direct responsibility for it, as you know,
19 but we need the emissions reductions again from that program, so
20 we need it to work. Our people track it technically, but it's
21 the Bureau of Automotive Repair lead.

22 SENATOR KOPP: Right, but have you examined the status of
23 if from the standpoint of whether we might have to renegotiate
24 that agreement in order to comply with the State Implementation
25 Plan?

26 MR. DUNLAP: I'm aware generally of those issues, but I'm
27 not expert on it.

28 I've had my hands full with some other policy issues,

1 Senator. So, but I have technical staff that are watching it
2 closely and participating.

3 As a matter of fact, the ombudsman that I brought on board
4 to work with the business assistance program, to set that up,
5 used to work with the Bureau of Automotive Repair, so we're
6 plugged in, so to speak.

7 SENATOR KOPP: We in the Legislature enjoyed the
8 assistance of the participating agency, the Secretary of the
9 Agency, during 1993 and 1994, but we had some problems with the
10 ARB, and we had some problems with so-called impartial outside
11 consultants formerly affiliated with the ARB. That was part of
12 the issue and it was part of the problem.

13 So, I'm a little bit frustrated and would appreciate it if
14 you could, irrespective of what happens in this Committee with
15 respect to this nomination and confirmation, provide me with the
16 ARB perspective on whether the 15 percent, the worst polluters
17 being subjected to the historical test-only system, have proven
18 to be an effective foundation or source of reducing emissions,
19 and whether the sensory -- remote sensing equipment is
20 functioning --

21 MR. DUNLAP: Okay.

22 SENATOR KOPP: -- functioning effectively. I think you
23 should take an interest in it. That's a prime subject of
24 interest to the Transportation Committee.

25 MR. DUNLAP: I'll commit to do so.

26 SENATOR KOPP: Otherwise, I have no further questions, Mr.
27 Chairman. I thank you for your indulgence.

28 CHAIRMAN LOCKYER: Thank you.

1 Mr. Dunlap, I think we could probably raise questions for
2 days and days that tried to help us predict any particular or
3 specific policy direction that you may undertake. I guess
4 there's been a good deal of that sort of interaction.

5 Let me start by saying I am very impressed, that you're
6 one of the most conscientious and fair appointees that I have yet
7 seen.

8 So, I would like to just get you to talk a little about
9 the job that is meant to draw out your leadership skills, ability
10 to manage the staff --

11 MR. DUNLAP: Sure.

12 CHAIRMAN LOCKYER: -- to be fair and independent, things
13 of that sort that are really not a specific real narrow issue,
14 but just sort of to kind of understand you more as a person
15 that's holding this job.

16 So let me just, if I may, start by asking you what's been
17 the hardest decision so far? Is there anything that stands out
18 in your mind?

19 MR. DUNLAP: I would have to say to being able to give
20 fair treatment as far as personal involvement, my time and
21 attention, to issues brought to my attention.

22 Being a Chairman of a board is different. I've been -- I
23 was a Chief Deputy Director of the Department of Toxics but I was
24 staff.

25 CHAIRMAN LOCKYER: How was that different?

26 MR. DUNLAP: Because you're actually implementing things
27 yourself. You're taking forward programs, developing them and
28 implementing.

1 As Chairman of a board, you need to work through people.
2 You need to direct; you need to track. Also, you know, being a
3 Chair of this Board, I have, you know, to run a meeting and give
4 policy direction.

5 One of the things that's aided me greatly was nearly the
6 decade I spent at the South Coast Air District. I started out in
7 the planning group, did some rule making work, and then worked in
8 the community relations side and served as health effects
9 advisor, and whatnot. So, I came to know air pollution
10 intimately, and I tried to reflect that in my opening statement.

11 So, I know the technical as well as the impact on the
12 regulated community, as well as the health implications. So,
13 being able to give my full attention to all of those issues, it's
14 a stretch. It's difficult, and you need to work through people.

15 One of the things I've come to know is that the staff at
16 the Air Resources Board is a very fine staff, been together many
17 years. They work well together. They're the best, I believe, in
18 the world in this endeavor.

19 That doesn't mean they're always right. It doesn't mean
20 that they don't make mistakes, but it means that they're right
21 more often than no, and they certainly know the issue.

22 So, being able to identify where there may be some flaws
23 takes a trick. I know how to do that.

24 CHAIRMAN LOCKYER: What would be an example or two or a
25 mistake?

26 MR. DUNLAP: I can give you one. I wouldn't necessarily
27 call it a mistake.

28 My first regulatory hearing in March dealt with aerosol

1 spray paints, and there was a company located in the Bay Area
2 that was concerned about this regulatory program. We'd put them
3 at a competitive disadvantage with other companies, larger
4 companies that had broader product lines. They came up and
5 testified --

6 CHAIRMAN LOCKYER: Like an automobile manufacturer?

7 MR. DUNLAP: Could be.

8 And they indicated that they would have a market
9 disadvantage, and they were essentially pleading with the Board,
10 "Can we do anything to ensure that we don't get run out of
11 business?"

12 And it was the sense of the board to direct staff to
13 monitor closely how things went with this company and get back to
14 us if the rule needed to be modified. We expressed the
15 willingness to that company that we would.

16 And so, catching those things --

17 CHAIRMAN LOCKYER: So the initial proposed rule was,
18 perhaps, too stringent or insensitive to the economic
19 consequences?

20 MR. DUNLAP: It made that one company feel like they would
21 have trouble surviving.

22 CHAIRMAN LOCKYER: How about the diesel fuel change?

23 MR. DUNLAP: Well, that predates me, as you know.

24 CHAIRMAN LOCKYER: I know. I mean, mistakes that predate
25 you.

26 MR. DUNLAP: Well, we -- I was asked earlier about
27 reformulated gasoline.

28 I was at the Department of Toxics when the diesel fuel

1 program was brought forward. A lot of problems.

2 On my watch, we paid out -- we're in the process of paying
3 out the \$6 million to folks that need to be reimbursed for engine
4 damage and the like.

5 I've made sure we've brought that forward, that program
6 forward, aggressively and paid them back. We're in the process
7 of paying them back.

8 I also examined what we didn't do for the diesel program
9 so that we could avoid those mistakes when we bring forward CARB
10 Phase II gasoline, which we're doing this year. And I'm actively
11 involved. I'm meeting not just with the oil companies, but with
12 environmentalists, looking at things such as health effects
13 implications, if there are any, to supply, trying to deal with
14 some cost issues that we're prohibited from. So, it's very
15 challenging.

16 But I feel that we're going to be able to bring forward a
17 good program. We're covering the bases with that program.

18 But those are -- I hope that gives you a sense.

19 CHAIRMAN LOCKYER: Yes.

20 As you've mentioned, Chairs sort of come and go of CARB,
21 and the staff is fairly stable. In fact, you may be a little
22 less than the median age of the staff at CARB, I think.

23 How does that feel in terms of your ability to provide
24 direction and leadership?

25 MR. DUNLAP: Well, my -- I'm comfortable with directing
26 staff to do what needs to be done. I'm not shy about that.

27 As far as my age, I don't think it's a factor.

28 As far as my experience, I think that --

1 CHAIRMAN LOCKYER: You've had a lot of experience.

2 MR. DUNLAP: -- I've had a lot of experience in this
3 field. I know the issues.

4 CHAIRMAN LOCKYER: Were you involved with South Coast in
5 the transportation constraints?

6 MR. DUNLAP: I was -- at one time, I managed the Small
7 Transportation Program in South Coast District, yes.

8 CHAIRMAN LOCKYER: Was this during the hot years when it
9 was very controversial?

10 MR. DUNLAP: Yes, primarily the development of the
11 transportation program.

12 CHAIRMAN LOCKYER: Did you learn anything from that
13 experience?

14 MR. DUNLAP: Sure.

15 CHAIRMAN LOCKYER: What?

16 MR. DUNLAP: I learned that you need to provide,
17 particularly when it comes to individual choice or decision
18 making, you need to provide some flexibility to companies. The
19 ride sharing program is one that's been a disappointment to me
20 personally, because I think it has some elements to it that are -
21 -- would provide companies with some flexibility and the like.

22 But the way it was implemented caused some people some
23 real concerns. They felt it was implemented like a traditional
24 stationary source regulation, and it wasn't and it isn't.

25 And that caused some concerns for a number of companies,
26 and there's a movement today to repeal that program.

27 Actually, South Coast has taken some action to make it
28 even more flexible, which is a good thing.

1 CHAIRMAN LOCKYER: Would you have any similar
2 responsibility under CARB, or would your rule making extend to
3 that mobile area?

4 MR. DUNLAP: Three primary areas: fuel, consumer
5 products, and tail pipe emissions primarily.

6 CHAIRMAN LOCKYER: It could entail --

7 MR. DUNLAP: Consumer products would be the area that
8 you'd have to watch --

9 CHAIRMAN LOCKYER: That would be particularly --

10 MR. DUNLAP: Yeah, you'd have to watch that closely.

11 CHAIRMAN LOCKYER: As I understand it, there are various
12 communications and working relationships that develop between
13 each state and the federal, I guess in this instance, EPA.

14 MR. DUNLAP: Right.

15 CHAIRMAN LOCKYER: How does that work in California when
16 you have this sort of over-arching department? Do you have some
17 direct responsibilities with certain areas and not others, or
18 describe that.

19 MR. DUNLAP: Well, let me go back to the State
20 Implementation Plan. Fifty-eight counties in California, as you
21 well know, 34 local air districts, they develop -- we don't issue
22 permits at the Air Resources Board. They do the stationary
23 source permitting program. They develop their -- they do the
24 planning work and developing their component parts of our SIP,
25 for example, the ozone SIP, and then we bring our three
26 regulatory areas together, and package it, and go to the federal
27 government.

28 In November of 1994 was the first time the federal
29 government allowed us to assign responsibility in our state SIP

1 to them. Twenty percent of our clean air strategies for
2 California has a federal lead, so they actually are truly a
3 partner with us.

4 And their area of responsibility is in certain engine
5 classifications and with planes, trains, and shipping, and other
6 specialty areas.

7 So, they're a partner with us. They also have some
8 oversight responsibilities, such as our SIP submittal. For
9 example, they found it complete in April of this year. We're
10 hoping to have approval for that SIP next year, and we're working
11 aggressively with them.

12 CHAIRMAN LOCKYER: Any areas that there's tentative
13 problems that have been identified?

14 MR. DUNLAP: We had a complete SIP finding, as I mentioned
15 in April, and that was a very good sign for us. So, we're
16 confident we'll be able to get the SIP approved next year.

17 We're continuing to refine and work through technical
18 issues with them. We announced the two gram NOx standard for
19 heavy-duty engines. We partnered with them and the heavy-duty
20 engine manufacturers about a month and a half ago. We had, we
21 think, a very fine arrangement for California when the national
22 heavy duty NOx standard was announced.

23 At present, we're working well with the federal government
24 on our clean air strategy for California.

25 CHAIRMAN LOCKYER: And it's directly through you? You
26 don't have state EPA intermediary?

27 MR. DUNLAP: No, we deal directly. We've always dealt
28 directly with the federal government.

1 We do -- agency -- Cal EPA does some coordination with us,
2 but we do have independence. We have the technical expertise.

3 CHAIRMAN LOCKYER: To the extent that anxieties have been
4 expressed about any sacrifice of independence, I suspect it is a
5 consequence of the view that Cal EPA is very political.

6 I don't expect you to comment especially on this, but I
7 think that may be where that worry derives from.

8 To the extent that you have scientific focus and
9 discipline that meets federal similar type work, and there's no
10 politics at either level, it's an encouraging thing, I think.

11 Senator Kopp?

12 SENATOR KOPP: No.

13 CHAIRMAN LOCKYER: Other Members, any thought?

14 Our attorneys, are they still out in the hall?

15 We have the two attorneys, which means there are at least
16 give opinions by now. And I don't know if those gentlemen have
17 had an opportunity to sort through.

18 Is it too soon, gentlemen, to ask for any preliminary
19 reactions or comments, or should we hold that for another time?

20 Maybe this has been explained. The counsel for CARB has a
21 different view than our counsel.

22 MR. DALE: I saw it on television before I left to come
23 over here.

24 CHAIRMAN LOCKYER: Yes, and so it was a matter of great
25 concern to Senator Ayala.

26 This is normally not where we would ask attorneys to
27 attempt to reconcile their views, but, gentlemen, any current new
28 thoughts or anything from either of you?

1 MR. KENNY: We don't actually have a puff of white smoke,
2 but we have been debating the issues. I think we're at a point
3 where kind of reasonable minds can disagree.

4 We are still trying to discuss the issue and convince one
5 another, but there isn't a lot of movement at the moment.

6 CHAIRMAN LOCKYER: All right.

7 MR. DALE: We disagree. I don't know how we could agree
8 at this point, but we'll keep talking.

9 CHAIRMAN LOCKYER: All right. Thank you both very much
10 for your willingness.

11 MR. KENNY: I'm Mike Kenny from Air Resources Board, Chief
12 Counsel.

13 MR. DALE: Ben Dale from Leg. Counsel.

14 CHAIRMAN LOCKYER: Thank you, gentlemen.

15 I'd just like to take a two-minute break, if we may, just
16 so Members will have an opportunity to interact a little before
17 we move on.

18 [Thereupon a brief recess was taken.]

19 CHAIRMAN LOCKYER: I'd like to get started again. Thank
20 you all.

21 Did you have anything you wanted to conclude with or add
22 at the end here before we move on?

23 MR. DUNLAP: Thank you for the opportunity to discuss such
24 a wide ranging air quality agenda, Mr. Chairman.

25 CHAIRMAN LOCKYER: What's the pleasure of the Committee?

26 SENATOR BEVERLY: Move we recommend confirmation.

27 CHAIRMAN LOCKYER: All right, moved by Senator Beverly.

28 SENATOR AYALA: I'd like to second that, Mr. Chairman, by

1 saying that he's caught between two legal minds. It's not his
2 fault, but he will do the best he can with what we've got.

3 CHAIRMAN LOCKYER: He has a Ph.D. in education. There're
4 never any disagreements there; are there?

5 Call the roll.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: Aye.

8 SECRETARY WEBB: Ayala Aye. Senator Lewis.

9 SENATOR LEWIS: Aye.

10 SECRETARY WEBB: Lewis Aye. Senator Petris.

11 SENATOR PETRIS: Aye.

12 SECRETARY WEBB: Petris Aye. Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Senator Lockyer.

15 CHAIRMAN LOCKYER: Aye.

16 SECRETARY WEBB: Lockyer Aye. Five to zero.

17 CHAIRMAN LOCKYER: Good luck.

18 MR. DUNLAP: Thank you very much.

19 CHAIRMAN LOCKYER: Warden Merkle, good afternoon, sir.

20 You seem to like Susanville.

21 MR. MERKLE: I love Susanville.

22 CHAIRMAN LOCKYER: How did you escape getting bounced all
23 around? How did you avoid getting moved around from prison to
24 prison?

25 MR. MERKLE: I don't know. I think it's because everybody
26 knew I like Susanville, and I was there to do a job.

27 CHAIRMAN LOCKYER: They'll let you stay in one spot?

28 MR. MERKLE: Not really, not really.

1 CHAIRMAN LOCKYER: Usually, when I look at these resumes,
2 people were all over the place, you know.

3 Did you want to start with any comment, sir?

4 MR. MERKLE: Yes. First I'd like to thank Mr. Chairman
5 and the Committee for allowing me to be here.

6 I've got 38 years in Corrections, going on -- next month
7 I'll have 39 years, and I'll try to be real brief on my
8 experience.

9 I started at Soledad when it was known as the Soledad
10 Prison. Worked there for several years. Promoted to captain at
11 San Quentin. Stayed at San Quentin for approximately seven
12 years, then went to Susanville in 1979 as an Association Warden.
13 Then promoted from Associate Warden to Chief Deputy Warden into
14 Warden at the California Correctional Center.

15 I've been a Warden -- I was Warden appointed to California
16 Correctional in 1987. And then, as of August last year, I was
17 appointed as -- to High Desert Prison. From August of last year
18 to July of this year, I was -- I had the responsibility for both
19 the California Correctional Center and High Desert Prison.

20 I guess I'd like to highlight my most qualified experience
21 as being Warden, you know, for the last -- since 1987.

22 California Correctional Center is a multi-purpose or level
23 institution, Level I, II, III. It's got an outstanding camp
24 program. Has 16 camps from Delta out of Vacaville to the Oregon
25 Border.

26 High Desert Prison, of course, is a Level III-IV. We're
27 in the process of activating now. At this time, I have 450 staff
28 there. Got the first group of inmates there, and we'll have more

1 inmates coming in in September.

2 CHAIRMAN LOCKYER: When will you hit capacity?

3 MR. MERKLE: We're looking at probably going into phased
4 occupation, and it should be at full capacity by January. Then
5 we'll be looking at the overcrowding to continue the population
6 upwards.

7 CHAIRMAN LOCKYER: Members, any questions here?

8 SENATOR AYALA: I'd just to ask him, how does that new
9 regulation for family visiting the inmates working out?

10 MR. MERKLE: Is that the regulation where it's restrictive
11 to those high violent potential?

12 SENATOR AYALA: Yes.

13 MR. MERKLE: A lot of the procedure is still in the
14 process of being worked out.

15 SENATOR AYALA: Is that implemented at all the prisons, or
16 just certain prisons?

17 MR. MERKLE: That would affect all the prisons. Most
18 prisons have the people that meet that profile.

19 SENATOR AYALA: I know that YATS is doing the same thing,
20 getting tough on the visitors to their wards there at the school.

21 I don't have any other questions.

22 CHAIRMAN LOCKYER: You've been in almost 40 years, did you
23 say?

24 MR. MERKLE: Yes, it'll be 39 years next month.

25 CHAIRMAN LOCKYER: Has the kind of convict you see changed
26 during that time? What changes have you seen, both on that end
27 as well as the system?

28 MR. MERKLE: I think when I started in the system, it was,

1 you know, probably the inmates were more conforming to the rules,
2 less sophisticated, didn't challenge you in court as much.

3 My personal opinion is that the population we have in our
4 prisons today potentially is much more dangerous than even those
5 populations that we had in the late '60s and early '70s, when
6 several staff got killed throughout the state.

7 I think we have a potentially violent population. It's a
8 reflection of what you see happening out in the free world.

9 CHAIRMAN LOCKYER: How about the system itself, the
10 correctional system? Has it changed in the 40 years?

11 MR. MERKLE: Yeah. The system has changed quite a bit.
12 The due process has changed, and of course, the prisons are now
13 much more overcrowded.

14 When I first went to Susanville, even Susanville was
15 designed at 1224 inmates; we had 900 inmates. We didn't have
16 overcrowding in the dorms. We didn't have overcrowding in the
17 gyms.

18 And basically, due process, the overcrowding. I think
19 we've got a more violent potential inmate out there.

20 And I think also what we're dealing with now, we're
21 dealing with the prison expansion, where we're dealing with a lot
22 of inexperienced staff to run these prisons.

23 CHAIRMAN LOCKYER: Are there a lot of new hires?

24 MR. MERKLE: A lot of new hires. I'll be opening up High
25 Desert Prison where the custody staff will be 50 percent new
26 hires, 50 percent experienced staff, and I'm fortunate. We're --
27 at the lieutenant and sergeant level, the supervisor level,
28 there's a lot of interest in Lassen County, and I'm getting a lot

1 of applications. So, I feel very fortunate in that respect.

2 CHAIRMAN LOCKYER: What do you consider the hardest part
3 of your job as Warden?

4 MR. MERKLE: Making the budget work.

5 CHAIRMAN LOCKYER: Jim, that's your fault.

6 [Laughter.]

7 MR. GOMEZ: It's somebody's fault. It's tough.

8 CHAIRMAN LOCKYER: Senator Petris.

9 SENATOR PETRIS: What are you doing to brace yourself for
10 a Three Strikes impact?

11 MR. MERKLE: That's a departmental issue. Each
12 institution will be expected to do their part, and when you get
13 the Three Strikes, you get the more long-term inmates, then
14 you're dealing with, again, more and more with a population that
15 can't see light at the end of the tunnel and will have a tendency
16 to act out more and care less.

17 So, the best way to prepare for it is to make sure your
18 staff are well-trained, and make sure that all our security
19 mechanisms are working. And a lot of communication with inmate
20 population.

21 SENATOR PETRIS: Do you do that in preparation for the
22 onslaught, communication with the population?

23 MR. MERKLE: Yes.

24 SENATOR PETRIS: Get them ready?

25 MR. MERKLE: We're doing that all the time.

26 SENATOR PETRIS: Thank you.

27 CHAIRMAN LOCKYER: Senator Ayala.

28 SENATOR AYALA: On that issue, it isn't the Third Strike

1 people who are crowding the prisons. It's the first and second
2 strikers who are doing that today.

3 MR. MERKLE: I'm not sure I understand, Senator?

4 SENATOR AYALA: I mean, the Third Strike law won't take
5 effect for quite a while. It's too new to have any --

6 MR. MERKLE: Yes.

7 SENATOR AYALA: -- implications or any way to judge it.
8 But it's the first strikers and the second strikers who are
9 causing the problem of crowded conditions.

10 MR. MERKLE: Yeah, the first strikers and the second
11 strikers are causing a problem.

12 Impact of the Third Strike will hit us at that particular
13 point in time when some of these people would have been going
14 home.

15 CHAIRMAN LOCKYER: So, it'll be a few years out still.

16 MR. MERKLE: Yes, sir.

17 CHAIRMAN LOCKYER: We have received no opposition to your
18 confirmation and only complimentary commentary, but let me
19 inquire if there's anyone present who wishes to add a word of
20 support. You're welcome to, but I think it's unnecessary. We
21 don't want to deny you.

22 Or, you can come up and say something sort of negative, if
23 you want.

24 MR. MERKLE: I don't know, with that crew sitting back
25 there it could happen.

26 CHAIRMAN LOCKYER: I have a feeling they're on your side.
27 What's the pleasure of the Committee?

28 SENATOR BEVERLY: Move we recommend confirmation.

1 CHAIRMAN LOCKYER: We have a motion to confirm. Let's
2 call the roll.

3 SECRETARY WEBB: Senator Ayala.

4 SENATOR AYALA: Aye.

5 SECRETARY WEBB: Ayala Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Senator Lockyer.

12 CHAIRMAN LOCKYER: Aye.

13 SECRETARY WEBB: Lockyer Aye. Five to zero.

14 CHAIRMAN LOCKYER: Good luck, sir.

15 MR. MERKLE: Thank you.

16 CHAIRMAN LOCKYER: Thank you, Warden.

17 MR. GOMEZ: Just for information, he was talking about the
18 conjugal visiting?

19 CHAIRMAN LOCKYER: Yes.

20 MR. GOMEZ: I was enjoined by Marin County and the
21 Appellate Court from implementing the Budget Act language, so
22 we've gone through a full regulatory process. There'd been no
23 implementation for a couple of weeks before we got hit by the
24 court.

25 [Thereupon the Senate Rules Committee
26 acted upon Appointees that were not
27 to appear before the Committee.]

28 CHAIRMAN LOCKYER: Our last confirmation, we have is Mr.

1 Mayfield. Good afternoon, sir.

2 MR. MAYFIELD: Thank you, sir. Good afternoon, Mr.
3 Chairman and Members.

4 CHAIRMAN LOCKYER: Did you want to begin with any
5 comments?

6 MR. MAYFIELD: Maybe just a short opening remark to
7 introduce myself.

8 I am John Mayfield, Jr., a small, minority enterprise
9 businessman in Mendocino County. Principal operation is a
10 company called Microphor, Inc. In Willits. We manufacture
11 toilets, sewage treatment equipment for a variety of uses around
12 the world but principally for railroad and marine business.

13 Our toilets are low-water consumption type, down to 22
14 ounces per flush. The standard ones are about 2 quarts that we
15 manufacture for all sorts of uses.

16 Another business that I'm involved in --

17 CHAIRMAN LOCKYER: Did you ever worry about whether then
18 people flush them twice?

19 MR. MAYFIELD: Sir?

20 CHAIRMAN LOCKYER: I mean, I've often wondered about these
21 low-flush toilets, if people flush them twice. I kind of worry
22 about whether the standard makes any sense.

23 MR. MAYFIELD: Senator, some of the toilets around you
24 would need to flush twice to clear. Microphor has been at this
25 for about 20 years in that.

26 I was a Lone Ranger for a long time, or maybe I was Tonto
27 because I'm Indian, American Indian, in that regard.

28 With the only low-flush toilet that the plumbing agencies

1 had approved worldwide for about almost 12 years before they got
2 into the gallon-and-a-half business, so we went through the fear
3 of double flushing. And I developed an imported gallon-and-a-
4 half toilet for quite some time with another company.

5 So, it's a legitimate concern.

6 CHAIRMAN LOCKYER: And it's worked out, though, with some
7 of the technology.

8 MR. MAYFIELD: It's worked. Technology has improved and
9 they do function well.

10 The other company that I'm involved with on an active
11 basis is another business that my sons and I have called Rainbow
12 Ag Services, with the John Deere dealers and agricultural
13 implement dealers, as well as irrigation and pumps in three
14 counties of Mendocino, Lake, and just not too long ago, Napa.

15 So, I'm involved in businesses on the North Coast, and own
16 a little bit of real estate around here and there.

17 But I'm on the Board, as you know, and I'm here for
18 reappointment as the industrial water user position that's on
19 there.

20 I was first appointed to this Board in December 12 of
21 1991; confirmed by this body on 8/29 of '92. I was reappointed
22 in November of this last year by the Governor, and I'm asking for
23 confirmation by the Senate so that I can continue to serve on it.

24 I've served on this Board. It's been an interesting
25 experience. I've been aware of and worked with the Regional
26 Water Quality Control Board for a number of years as a Member of
27 the Board of Supervisors some years ago, and of course, being in
28 business on the North Coast, you can't avoid the dirty water

1 business around here and there, particularly since I'm in the
2 sewage treatment business. I'm at least aware of what their role
3 is and the technical aspects of many of the things that they do.

4 We've accomplished several things since I've been on the
5 Board, and I think most notable is, when I first went on this
6 Board, I received a number of complaints from people that, they
7 said there was no appeals process to decisions of regulatory
8 staff s it related to the underground tank program.

9 I was amazed, because in any governmental process that I'd
10 been in, there'd always been an appeal process to either an
11 appointed, or elective, or a judicial system.

12 I found what they were telling me was in fact true, that
13 there were some programs in the underground tank business and in
14 some of the other regulatory functions that it was ill-defined
15 that there was a process of appeal. And in fact, a contract
16 county on the underground tank program in Sonoma, there was
17 actually a prohibition from appeal; that the local bureaucrat
18 made a decision that you had to live with.

19 I took the initiative and the Board support, and we
20 finally got that changed. And the State Board contracts now with
21 local agencies, does require them to have an appeal process,
22 something I think is very important for the public, and
23 particularly the regulated public and the stressful things that
24 go on with the underground tank business.

25 We've also been effective in getting more definitive
26 standards on what's being done in cleanup levels. One of the
27 problems has been the nebulous standard of what is clean. Nobody
28 seems to know in many cases, and our own Senator, Senator

1 Thompson, carried a bill that set up a scientific advisory
2 committee to give the State Board some counsel in this regard.
3 Their report should be back very soon. I think you're probably
4 familiar with that bill. It's something that I supported and
5 talked to the Senator about.

6 We have also been able to put a greater emphasis to take
7 care of the things that of public health and safety concern
8 before you do the other things. That is, you don't necessarily
9 sort your workload by the day it hits your desk and put it in a
10 pile and only peel it off like an onion skin. But you take care
11 of those things that are of true concern to the public health and
12 safety. And you do it expeditiously so that you continue to
13 guard that clean water and the public health and safety that
14 exists in that we're in.

15 I've had some unusual experiences, being an industrial
16 water user. I know that you have a report, and I'd like to
17 briefly cover some of the things.

18 Approximately a year ago, I was in the process of selling
19 Microphor, Inc., or attempting to, to a rather large public
20 company. We'd done a phase one survey, that I'll get into a
21 little bit later, approximately a year before without anything
22 being indicated as a problem.

23 ITT, being a very cautious organization, came in and did a
24 phase two survey on the property and found out we have a problem.
25 We discovered that we had some groundwater pollution in one
26 particular area of a 17-acre site. We occupy about 5 acres of
27 this for manufacturing and storage and other uses, but there's a
28 big, vacant portion of it.

1 As soon as we discovered this problem, I set about to, if
2 you will, build a picket fence around it to try to find out how
3 big it was. To date, I've spent about \$350,000 to narrow the
4 item down, working with consultants, and staff and others, to
5 find out how big the problem is.

6 We defined it. It's not a great big problem, and we will
7 work to get a remedial program put in place.

8 And I recognize that if something in regard to that comes
9 before the Board, or the senior staff, that I must recuse myself
10 on it. I have no problem with this. I've done it on other
11 issues that have come before the various boards and commission
12 that I've sat on, and in fact on this Board.

13 But it's a rather jarring experience to find out that
14 you've got something like that, particularly in view of another
15 incident that when I, as some people do and I'm one of those, was
16 in the process of refinancing this particular business about a
17 year before, in April of '93, in fact, was down to the closing
18 with the title company to substitute one bank for another.

19 And we'd done a phase one -- the bank had done a phase one
20 survey and had found nothing. Four days before we're to close
21 the escrow, we turned up on the Cal. Site Superfund List. Rather
22 a shock, to say the least.

23 About \$50,000 later, I was able to get the other bank to
24 substitute in for the first one, after clearing up the issue as
25 it related to the Cal. Site's Superfund List.

26 CHAIRMAN LOCKYER: How was that resolved?

27 MR. MAYFIELD: Well, I was put on the list because of the
28 drive-by survey in 1988.

1 When I called the Department of Toxics Substances to find
2 out what the situation was, there was no file. I was told first,
3 "Send us \$8350; we'll open a case and see what we can find out."

4 I said, "Well, I need to know what's in the file. How did
5 I get in this position?"

6 They searched and found the only thing that they had was
7 in the electronic data system, that there had been in 1988 a
8 drive-by survey of the facility done by a contractor. He noted
9 that we were a substantial industrial facility located next to a
10 railroad track; therefore, we've got to be bad.

11 I'll submit to you that that's a horrible way to find out
12 that you've got that sort of a problem that would essentially
13 bankrupt you if you didn't at least know how to go around and
14 find out what went on.

15 We inquired about it. The Department of Toxic Substances
16 worked with us. Said they'll pay -- we don't have information.
17 We'll request the county come up and do a survey; they did.
18 We're like everybody else, we've got county hazardous waste
19 programs that go back to day one of the programs being involved.

20 They came back up in conjunction with the -- or at the
21 request of Toxic Substances. Did another review of everything
22 and said, "We don't see any reason for this to be on there. We
23 don't know of any spills or any problems."

24 Phase one had turned up a couple of small surface
25 stainings and some oil and other things, so we started to clean
26 those up and went ahead with the operation when they agreed and
27 wrote the bank a letter that, okay, they're not going to take us
28 off the List. What they're going to do is put us on a different

1 category. That further investigation by their part before they
2 call us a toxic -- the worst kind of a case, if you will, they
3 need to get some more information.

4 So, that was where we left it at that point until the
5 examination that was done in the phase two, when I was in the
6 sale for ITT.

7 But I didn't let it drop at that point.

8 CHAIRMAN LOCKYER: Then what happened? Isn't it back on
9 the List now?

10 MR. MAYFIELD: It is now because of what was found
11 subsequent to this.

12 CHAIRMAN LOCKYER: So, the original determination was
13 correct.

14 MR. MAYFIELD: That's correct.

15 Now, the original determination was not done at that
16 point. It wasn't done until some 12 or 14 months later.

17 I took it on my own initiative -- this was before ITT got
18 involved in the next phase two, the rest of it -- that, boy, how
19 many people are out there with a drive-by survey and absolutely
20 no factual basis that you may have a toxic site. I find there's
21 some 20,000.

22 So, I went to work on my own to say this isn't right. We
23 ought to at least inform the property owner before he gets down
24 to the last day of trying to record a transaction in real estate
25 that something's haywire.

26 So, in working with the Department of Toxic Substances, I
27 attended their site mitigation committee. I wrote letters. I
28 did everything you could think of to get people's attention on

1 this.

2 Finally did. A year and a half later, there's 16,000
3 sites, including myself, dropped from that electronic data list
4 as Superfund Sites.

5 I think I can take credit for at least starting the ball
6 rolling on that, not getting it down. But I got dropped when
7 they dropped the rest of them finally out of the list.

8 Unfortunately, I got back on it a year and a half later,
9 when we discovered that I did have a real problem.

10 It, you know, is not a pleasant experience to go through,
11 but it's certainly one that we all get through.

12 I have Bob Borzelleri here with me, the Chief of the
13 Department -- or Chief Deputy Director, Department of Toxic
14 Substances Control, to verify what I've told you about that, if
15 you're interested in seeing the documentation.

16 CHAIRMAN LOCKYER: Your commentary seems to track with
17 what facts we're aware of.

18 MR. MAYFIELD: I know that I have the reputation around of
19 being rather direct about things, but it's how I operate and try
20 to get things accomplished and done. I try to treat people
21 fairly in doing that.

22 CHAIRMAN LOCKYER: The question that's been raised here is
23 not whether you're direct -- I'm at a loss for words -- whether
24 you intimidate people that appear before you or staff. And
25 that's the comment we've heard from some.

26 Sometimes, I guess, directness can be construed either
27 way, as a virtue or a vice.

28 Senator Ayala, did you have a question?

1 SENATOR AYALA: Yes.

2 Mr. Mayfield, we have a number of letters in opposition to
3 you. One of them is because they accuse you of refusing to fine
4 or regulate the Ukiah dump, which is polluting the Russian River.

5 Can you name any company that you have ordered to cite for
6 a major violation, and the amount that has been fined?

7 MR. MAYFIELD: Senator, there's -- I don't recall the
8 companies that have been before the Board by name or not, but we
9 have leveled fines and civil penalties against people with
10 violations.

11 SENATOR AYALA: You can't recall one single firm?

12 MR. MAYFIELD: Several of them have been small sewer
13 districts, city and county sewer districts, a gravel company. I
14 don't recall the names of the individuals, but we treat --

15 SENATOR AYALA: What about the Ukiah dump? Have you been
16 involved with that at all?

17 MR. MAYFIELD: Yes, sir. I'm a neighbor. I live very,
18 very close to the dump.

19 I understand that somebody thinks that I should have voted
20 to close it. It would be probably in my wife's best interest if
21 I did, because we live close to it, very close to it.

22 But I need some basis for closing the dump, other than the
23 fact that somebody wants to get rid of a dump in their
24 neighborhood.

25 There is, to my knowledge, no evidence ever been presented
26 to our Board that there is, in fact, pollution taking place
27 downstream from the dump, in the test wells that are there, or
28 anything escaping beyond the entrapment ponds that are below it.

1 I've visited that site frequently because it's a dump that
2 I use. I'm also familiar with all of the problems and the
3 allegations that have been made against them, and the neighbors
4 that would like to see it closed.

5 But I, as a neighbor, in good conscience could not vote to
6 close it unless there's some --

7 SENATOR AYALA: There's no evidence that the underground
8 basin's been polluted, or that the Russian River's been polluted
9 as a result of that dump?

10 MR. MAYFIELD: Not one scintilla of evidence has been
11 presented at our Board.

12 SENATOR AYALA: Thank you.

13 CHAIRMAN LOCKYER: Unfortunately, one of the constraints
14 that we have is people who suggest that there are toxic materials
15 leeching into the stream, but who are reluctant to appear because
16 you're a very important man in your community, and they don't
17 like to get in disagreeable public debate with a man of your
18 standing.

19 But there are, just at least for the record, those that
20 suggest that their own property evaluations indicate that there
21 is toxic leeching that's occurred.

22 MR. MAYFIELD: Senator, I can't control what someone would
23 not do in that regard, but seriously, we have looked for -- very
24 desperately -- for anything in the --

25 CHAIRMAN LOCKYER: Has the Water Board --

26 MR. MAYFIELD: -- in the monitoring wells.

27 The Water Board staff has made several reports on this.
28 There was a lawsuit filed, dismissed, that made some claims about

1 water pollution in the next drainage from the -- from the garbage
2 dump. It's been a very contentious local situation.

3 Believe me, politically from my own standpoint, it'd be a
4 lot easier to vote to close it than it is to keep it open. But
5 I've got to have some evidence that says we've got a problem,
6 folks, and that we've got to close it early and not let it live
7 its useful life and be kept and treated like the rest of the
8 dumps around.

9 CHAIRMAN LOCKYER: Let me just inquire if there's anyone
10 present who wishes to comment, either for or against the
11 nomination? Yes, ma'am.

12 MS. ADELMAN: My name is Brenda Adelman. I live in the
13 town of Guerneville, which is quite a distance from Ukiah.

14 I am unable to testify around the Ukiah dump issue, but I
15 have some other issues I would like to bring up.

16 CHAIRMAN LOCKYER: Sure, fine.

17 MS. ADELMAN: I am head of a group called Russian River
18 Watershed Protection Committee. I have lived in the Guerneville
19 area since 1975.

20 Guerneville is approximately 17 or 18 miles from the mouth
21 of the Russian River. We basically are involved with the lower
22 Russian River. And our community is principally a tourist-based
23 economy, and it used to hold one of the finest world's fishery
24 populations in the entire world. People came from all over the
25 world to fish in the Russian River, primarily for salmon and
26 steelhead, especially steelhead.

27 Our group has the support of many, many business people.
28 Well, let me just mention, first of all, that a large amount of

1 the property in our area is owned by people who come to vacation
2 in the area, and this is their second vacation home.

3 The supporters for our group -- we're a small group, but
4 we have about 2500 supporters or more, many of whom contribute
5 regularly. And these people represent business interests along
6 the river as well as the property owners, many of them living
7 throughout the Bay Area and not just locally in the Guerneville
8 area.

9 Some of the people supporting us are Birk's Canoes. We
10 work closely with the Chamber of Commerce. There's several
11 resorts in our area who support our work, as well as other
12 businesses. I forgot all the detailed list here. Our local
13 sports store has supported us.

14 One of the things that's happened with the fishery, it's
15 very much in demise. Just last week, or the week before, the
16 coho salmon has been listed -- has been suggested to be listed --
17 it's going through the process now, for threatened status.

18 The reports we get from fishermen is that the fish are
19 often not eatable. Many people just throw them back at this
20 point in time. They very often have sores on them. It's very
21 much in a demise. It's been well documented that the numbers of
22 the fishery have been decimated in just the last 20 years. I
23 don't know the exact percentage, but it's less than half of what
24 it used to be even 20 years ago.

25 There's large concern -- many of our people, we've
26 solicited their commentaries on their health: how does the
27 Russian River affect their health when they swim in it?

28 We've had extensive reporting of people who have

1 intestinal problems after they swim the river; they swallow some
2 of it. Skin rashes. Eye infections, ear infections, et cetera.

3 And we have worked with the Sonoma County Board of Health,
4 and have convinced them that it is appropriate to announce to
5 local people that if their immune system is impaired, it would be
6 best for them, at the very least, to keep their face out of the
7 water when they swim in the river.

8 Another sign of degradation in the lower river that is
9 very offensive to the people who recreate there is high levels of
10 nutrient contamination: slimy bottom muds, and exotic plants
11 growing on top of the river. Very often you'll see foam on the
12 river.

13 There have been a great many problems, and just a lot of
14 problems with the river.

15 Our group, for the most part, has focused on waste water
16 issues, and principally the discharges of Santa Rosa. In that
17 regard, we have been appearing --

18 CHAIRMAN LOCKYER: You're property owners, as I understand
19 it?

20 MS. ADELMAN: I am personally a property owner.

21 CHAIRMAN LOCKYER: Your group is made up of --

22 MS. ADELMAN: Our group is made up of many, many property
23 owners, yes. Probably the greatest number of them are property
24 and business owners along the river.

25 CHAIRMAN LOCKYER: I'm sorry, you were going to mention
26 appearances. Go ahead.

27 MS. ADELMAN: At any rate, our group has been concerned
28 about the waste water issue a great deal. We have studied it

1 extensively. We have provided expert testimony.

2 We have appeared before the Water Quality Control Board,
3 both the North Coast Board and the State Board every opportunity
4 when Santa Rosa's waste water has been an issue, as well as other
5 issues that we've been concerned about as well, but that's been
6 our prime focus.

7 We have tried to educate ourselves. We have submitted
8 written testimony. We believe we have acted responsibly at all
9 times.

10 At some of the meetings, massive numbers of people from
11 the community have appeared. And I'm sorry to tell you, almost
12 every time we've gone there, we have been rudely treated by Mr.
13 Mayfield. He has interrupted me every single time I've made a
14 presentation with the accusation that I'm not -- nothing I say is
15 relevant or on the point.

16 And it's very disturbing, because when only two or three
17 people want to make commentary or want to give testimony on the
18 subject, we are limited to three to five minutes, and then part
19 way, after about the first minute of testimony, I am told that
20 I'm off the subject, or I'm argued with, or various different
21 interruptions occur, so that I have not given complete and
22 careful testimony and have been able to address all the issues I
23 wanted to address because of the way I was treated and some of
24 our other representatives have been treated as well.

25 It just makes it very difficult. In the last meeting, we
26 are in the process of -- we have filed a lawsuit against the City
27 of Santa Rosa, and we are currently working with attorneys right
28 now.

1 Our attorney decided, since we learned that Mr. Ross
2 Liscum is currently Chair of the State Board, and he is also a
3 member of the Santa Rosa's Board of Public Utilities, and he has
4 accustomed himself, whenever there's a hearing on a Santa Rosa
5 matter, which the case in, I believe, the June meeting of this
6 year, he absents himself from the Board and the Vice Chair takes
7 over. In this case, it was Mr. Mayfield.

8 And knowing that this would be the case, we wrote a letter
9 to the State Board, asking them to please send a representative
10 because we felt -- we had concerns that our testimony would not
11 be fully heard.

12 Mr. John Brown, who's from the State Board, attended the
13 meeting. And needless to say, part way through my testimony, I
14 was interrupted, and just really prevented from giving my full
15 testimony. And the same with -- we had our consultant, our
16 environmental consultant there, and I had -- our attorney was
17 there, and similar things happened with them.

18 And at the intermission, Mr. Brown came up to speak with
19 us for the full 15 minutes that the break was taking place, which
20 in my mind was quite a message in and of itself. And he was
21 expressing his concern about the way we were treated. He was not
22 very specific, but the subject matter had to do with renewing
23 Santa Rosa's permit, their NPDES permit, which is their discharge
24 permit.

25 We had quite a few concerns about the way the permit was
26 written. And he suggested that because of the way the testimony
27 -- well, he didn't -- he wasn't very specific. He was very
28 careful in his choice of words, but he suggested we might want to

1 appeal to the State Board because, indeed, they are different
2 people with a different perspective on things, which we then did,
3 and we now have the permit being challenged.

4 It didn't need to work that say. And I have to say that I
5 understand that, you know, it's possible for people to disagree
6 with us.

7 I want to cite one other incident where we were treated so
8 rudely that the Chairman of the Regional Board called me up
9 personally at home to apologize. And he said, "I don't always
10 agree with what you have to say, but I believe you were treated
11 disrespectfully, and I apologize for that."

12 And I want to say that I understand that a lot of people
13 don't agree with me. I don't agree with a lot of people. I
14 personally believe that yet, as representative of a large base of
15 a concerned community, that I have the right to respectfully get
16 up and give my opinion on these very deep concerns that I have
17 and that people in my community have. And I, on many occasions,
18 have not been allowed to do that.

19 I'm sorry I had to come today, but I felt it was important
20 to give you my message.

21 Thank you.

22 CHAIRMAN LOCKYER: Are there any substantive decisions
23 that the Board rendered with which you disagreed, or is it that
24 the Board just didn't act at all? Separate from the sort of
25 decorum treatment issues. Just in terms of the substantive
26 product of their work, is there something of that sort that you
27 would point to as --

28 MS. ADELMAN: Well, we had real concerns -- I have to say

1 in this last meeting, and it was probably because the lawyer we
2 had gave a very fine presentation, that the Board did indeed
3 address one of our concerns in our view in a satisfactory way.

4 But there were many points we wanted to make, we were
5 trying to make. And I can give you one example, if that would be
6 helpful.

7 The current permit said that there should be a maximum of
8 a 1.5 chlorine residual at the end of the chlorine contact
9 chamber.

10 The City of Santa Rosa was constantly over that,
11 consistently over that, and that's one of the things we're
12 challenging in our lawsuit.

13 And this particular permit changed one word, and it just
14 changed that word "maximum" to "minimum", which we considered
15 backsliding. And we were trying to make that point, and there
16 was no change made. And that's one of the things we're appealing
17 to the State Board.

18 CHAIRMAN LOCKYER: Thank you for your comment.

19 Is there anyone else present that wishes to add anything
20 into the record?

21 MR. ZEDRICK: Don Zedrick, Environmental Resource Council,
22 more commonly known as ERC.

23 We represent tank owners, grass-root tank owners,
24 individual tank owners, not the big organizations. In Region
25 One, there are about 1500 and growing everyday as properties
26 transfer and disclosure and all of that.

27 And we have found Mr. Mayfield's work in that area -- and
28 that's all we deal with is underground tanks, trying to help

1 people survive the process, not try to bend one way or the other,
2 but as he spoke earlier, there wasn't even an appeals process in
3 the beginning. And that started in 1992.

4 Mr. Mayfield is tough. He does his homework. That's the
5 problem with Mr. Mayfield. You do not go up in front of the
6 Regional Board unless you have done your homework, because he has
7 done his homework.

8 And we have been voted down several times by the Regional
9 Board because we didn't do our homework, or we did not bring
10 evidence to what we were saying.

11 And Mr. Mayfield will -- he wants to hear about facts. He
12 wants to hear -- you know, he wants to hear something that makes
13 sense.

14 And, you know, we have dealt with the State Water Board on
15 this issue. Sometimes the Regional Water Board can't do
16 anything, so you go to the State Water Board. You know, it's
17 part of the process.

18 So, we feel that Mr. Mayfield -- I don't know about the
19 decorum issue. We have filled the North Coast Water Board
20 building -- it would fill this room three times with tank owners.
21 The same kind of, you know, raucusness. And Mr. Mayfield tries
22 to keep people on track, because we'd be there for days if he
23 didn't.

24 And the Chair -- and it's hard, you know. You've been in
25 those situations.

26 But he does do his homework; we do know that. And we
27 don't dare go in front of the Regional Water Board with an issue
28 unless we have facts and figures to back up what we're saying.

1 And we try to help tank owners.

2 And Mr. Mayfield is fair, but he's very firm because these
3 issues are -- when you're dealing with groundwater, as you well
4 know, it is emotional. And I'm sure all of you know tank owners
5 in your own districts. It's a devil of a situation.

6 CHAIRMAN LOCKYER: Thank you.

7 MR. ZEDRICK: So, we feel that Mr. Mayfield should remain
8 on the Board because we need that level playing field, and people
9 to bring to the central issue, and to the facts, and make people,
10 you know, you've got to work for your issue and not just be
11 swayed one way or the other because groundwater is important, and
12 everyone wants -- does not want to be a polluter. Nobody wants
13 to be a polluter.

14 Tank owners want to get their situation cleaned up. And
15 we do -- anybody who's trying to pull tomfoolery with
16 groundwater, we want taken to task, and then, you know, dealt
17 with.

18 And we need people like Mr. Mayfield to help that -- to
19 continue that process and to bring appropriate science, and some
20 common sense.

21 So, that is our position. We hope that you will retain
22 Mr. Mayfield on the Regional Board.

23 CHAIRMAN LOCKYER: Thank you, sir.

24 You know, I never heard the conclusion of the story on the
25 Willits property. Did it finally sell?

26 MR. MAYFIELD: No, I still own it. We are in the process
27 of -- we went, like I said, built a picket fence around it,
28 defined down to where our problem is with it. Cleaned up the

1 three or four small -- we had a hydraulic oil system leaking in
2 one place. It was an old hydraulic system, had a little bit of
3 PCBs in it that was excavated out, as you do with that sort of
4 thing. I believe it's been disposed of in an approved site.

5 We are in the process now of doing the monitoring program
6 necessary to get to a reclamation program.

7 It's confined to an area back of the machine shop. If you
8 looked at our facility, we're about 17 acres. The machine shop
9 is about a 6,000-square foot building on one corner of it.

10 Unfortunately, from the best we can determine, one of our
11 employees was using trichoroethylene to kill blackberries, much
12 contrary to our wishes of the way you dispose of it.

13 Our first suspicion was that we had a leaking storage
14 tank, or a sump, if you will, where all of the cutting fluids
15 from this machining operation went into. It's the first thing we
16 attacked. And I was rather disappointed when we found out that
17 we didn't have a leak under that tank, because then you don't
18 know what you're dealing with for a source.

19 And in trying to reconstruct things and interview people,
20 what we're finding in the ground, and with the groundwater
21 monitoring we're doing in the test wells and the rest of the
22 stuff indicates that what some of the ladies there said to us is
23 really, in fact, true, that the employee was using a coffee can
24 to dispose of small amounts of this stuff on where the
25 blackberries were interfering with the fence. And it was his
26 responsibility to keep the fence real clean. It's one of those
27 things.

28 But we will get it cleaned up. There will be a program

1 put in place by a consultant that I have hired. From day one,
2 they are dealing with the Water Board staff, Irwin Kalinowsky.
3 They're not from our local area. I think your consultant
4 probably looked at the reports that we've prepared on it.

5 I think we've gone the extra mile to try to make sure that
6 what I did is right and certainly conforms to what the
7 requirements are. In fact, the consultant says, "You've done a
8 lot more than you should have in the time that you did."

9 And it's one of the reasons that I didn't sell the thing,
10 is ITT wanted to go through about a three-year process to define
11 what the problem was. All that happens to me when you wait that
12 long is, the problem gets bigger.

13 But we are on a course that should do it, and hopefully,
14 they're going to submit a program.

15 CHAIRMAN LOCKYER: They is who?

16 MR. MAYFIELD: The consultant, Irwin Kalinowsky, and they
17 would -- they're dealing with the Board on it and our attorneys.

18 CHAIRMAN LOCKYER: Was there some discussion of shifting
19 the responsibility back to the State Department of Toxic
20 Substances, rather than have the Regional Board responsible for
21 reclamation?

22 MR. MAYFIELD: It was -- I don't know how serious a
23 discussion it got. It was a question that was raised.

24 I frankly think that it ought to remain with the Regional
25 Board because they have more information on the local geology
26 there, and that's what we're dealing with, some very difficult
27 areas with little sand stringers and things. And I think you
28 want the most knowledgeable people with that geology around, and

1 that's certainly the local board staff and our consultants.

2 But, you know, that's a decision that could be played out
3 any direction or argued.

4 CHAIRMAN LOCKYER: I understand.

5 I guess one of the questions is whether the staff or other
6 Board members would feel constrained by your membership on the
7 Board to render opinions or decisions that you might find
8 disagreeable. Even though you recuse, they are there with you.
9 They know that you're on the Board and so on, and whether that
10 provides any disincentive to, perhaps, do something that you'd be
11 critical of.

12 MR. MAYFIELD: It's been the other direction at this
13 point, that I've insisted they go the extra step on the thing,
14 based on what the consultants have done, and my son, who
15 interfaces with them.

16 And I don't think that they're intimidated by me. The
17 senior staff certainly isn't, and the other Board members
18 certainly are not.

19 They're fully aware of it, anytime anything comes up, that
20 I can recuse myself.

21 CHAIRMAN LOCKYER: Other questions from Members at all?
22 Did you have anything you wanted to conclude with, sir?

23 MR. MAYFIELD: Nothing, other than to maybe comment a
24 little bit on Mr. Adelman's problem of me trying to keep her
25 between the fences and talking about the issues before us.

26 And she's right. At the last meeting, they did present a
27 very concise statement dealing with the issue that was before us.

28 That's generally where we disagree, is when I'm trying to

1 keep them focused on the issue of the public hearing that's
2 before us and the subject matter of it.

3 We've seen the cost of Santa Rosa's sewer project, because
4 of these delays, go from probably 40 million to over 200 million.
5 And the delays and this sort of thing, we're all concerned with
6 cleaning up the river water down below, and the quicker we get to
7 the project, rather than not doing them, the quicker we're going
8 to have clean water in those areas.

9 CHAIRMAN LOCKYER: I guess maybe I should have asked one
10 thing, although I would easily predict the reaction.

11 We routinely look at everyone's statement of economic
12 interests.

13 MR. MAYFIELD: I understand.

14 CHAIRMAN LOCKYER: And you're prosperous and own
15 substantial amounts of oil, mining, timber, real estate,
16 businesses and so on.

17 Congratulations.

18 But it raises the question of, if those aren't the kind of
19 businesses that routinely have to appear before the Water Board,
20 and even though there's not a direct conflict because it's
21 unlikely that your own properties would be the subject of the
22 discussion, but that whether there'd just be a tendency to want
23 to give the benefit of the doubt to those that are in similar
24 businesses.

25 MR. MAYFIELD: One unfortunate thing about the disclosure
26 statement is, it really doesn't tell you a great deal of what the
27 limits are on some of this.

28 CHAIRMAN LOCKYER: Sure.

1 MR. MAYFIELD: I reported everything that I have, whether
2 it's the IRA account that I have no control over on a day-to-day
3 basis of what the stock broker buys and sells --

4 CHAIRMAN LOCKYER: I'm not sure a merging Germany fund is
5 a good one right now.

6 MR. MAYFIELD: Okay, that's one that I think we're out of
7 today.

8 So, I found out not too long ago that I owned some
9 Louisiana Pacific in an IRA account, and I instructed him to sell
10 it because I found out two days before we had a Board meeting
11 that they'd purchased some. And it's gone down further; I was
12 lucky to tell him to get rid of it. Because, I didn't want to
13 create that conflict.

14 The stock that I own, and small oil companies and stuff --
15 I own a partnership in some gas wells in Colorado.

16 CHAIRMAN LOCKYER: It's not local.

17 MR. MAYFIELD: Not local. And incidentally, the way they
18 treat some of the things they do is much simpler than it is here,
19 and a lot more direct and to the point.

20 But I also own some timberland, a couple hundred acres up
21 on top of Mount San Hedron that is purely timberland. Another
22 256 acres that's near Brook Trails, a resort community in -- near
23 Willits.

24 I subdivided along with some other people a large parcel
25 of property. This is a remainder piece that left out of that.
26 It's zoned 20 acres. I've held onto it for some 18 years now,
27 because it is the upper limits of Brook Trails watershed.

28 One of these days they need it. I decided when we did

1 that subdivision not to create 20-acre parcels on it but to hold
2 it. And I've done that, and I've kept it there for all this
3 time. One of these days they're going to want to buy it. I cut
4 firewood on it now. Once in a while, we may be able to take some
5 commercial timber off of it, but I doubt it seriously. We did
6 that in 1968, and I doubt if we'll be able to revisit it again
7 because of the changed regulations.

8 But it was held, knowing that it was critical to the Brook
9 Trails watershed, right above one of their dams. In fact, it
10 will be right adjacent to a proposed expansion they're talking
11 about now, but that long ago, we could that it was -- I could see
12 that there's no need to create a problem for them by putting 20-
13 acre parcels on that portion of that ground.

14 I tried to act responsibly with the things that I have
15 done, Senator.

16 CHAIRMAN LOCKYER: Thank you, Mr. Mayfield.

17 Members of the Committee --

18 SENATOR BEVERLY: I was going to ask one question.

19 I wanted to try to find the problem with reference, if
20 there is a problem, with reference to the Ukiah dump. You've
21 said there were staff reports indicating there was no pollution?

22 MR. MAYFIELD: That's correct.

23 SENATOR BEVERLY: Because the Friends of the River, and
24 the Sierra Club, and so forth, flat out state that it is a major
25 polluter of the river.

26 MR. MAYFIELD: I --

27 SENATOR BEVERLY: By staff, which staff are you referring
28 you? In your Regional Board?

1 MR. MAYFIELD: Regional Board staff, the City of Ukiah's
2 staff.

3 I cannot be responsible for what the Sierra Club and
4 Friends of the River may make as misstatements of fact.

5 But in our hearings, in our meetings, and to my own
6 information, there is no groundwater pollution getting out of the
7 catchment basin below the garbage dump.

8 There are a number of monitoring wells located around the
9 periphery of the dump. The ones right close to the toe of the
10 fill have some problem, as you would anticipate, but as you go
11 away from it, you're certainly within the limits, and nothing's
12 getting into the river or flowing into the river.

13 There's some wild allegations have made about this because
14 it's near the Vichy Springs Resort. It's of concern to me
15 because I know the man who has instituted the program to shut
16 down the dump because it would enhance the value on his real
17 estate. It probably would mine, because of where I live.

18 SENATOR BEVERLY: All right, thank you.

19 CHAIRMAN LOCKYER: It seems to me, sir and Members of the
20 Committee, this is an issue that would benefit from a little
21 mulling time.

22 I'd like very much to look at the file from Toxics. They
23 haven't been willing yet to make that available to us. I think
24 they have an obligation to, but we're hoping that that will
25 occur.

26 MR. BORZELLERI: Senator, I'm Bob Borzelleri. I'm the
27 Chief Deputy Director of Toxics.

28 The file has been made available.

1 CHAIRMAN LOCKYER: No. Maybe it's in the mail.

2 MR. MAYFIELD: What would you like to have? I think I
3 probably have it with me.

4 CHAIRMAN LOCKYER: We'd like to just look through the
5 file, just review the paper trail on the Willits property,
6 especially.

7 MR. BORZELLERI: I'll make sure that you get it in its
8 entirety.

9 CHAIRMAN LOCKYER: We haven't seen it yet. Mr. Gordon is
10 the one who'd like it. We'd like to do that before September
11 15th, so we'll have the time and the opportunity to make informed
12 judgments.

13 Thank you, sir.

14 MR. MAYFIELD: Thank you very much.

15 CHAIRMAN LOCKYER: It's a pleasure to have you with us.

16 MR. MAYFIELD: Thank you. I know you've had a long day.

17 CHAIRMAN LOCKYER: Yes, I'm afraid it's not over yet.

18 MR. MAYFIELD: If there's any other further information --

19 CHAIRMAN LOCKYER: We'll call.

20
21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 5:02 P.M.]

25 --oo0oo--
26
27
28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of September, 1995.


EVELYN J. MIZAK
Shorthand Reporter

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